

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

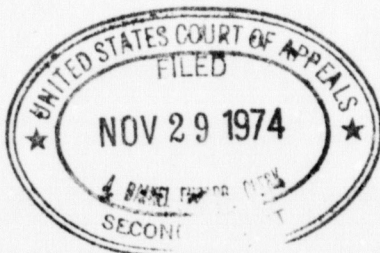
JACK REX PIGMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Vermont,
Honorable Albert W. Coffrin, District Judge

APPENDIX FOR APPELLANT PIGMAN

Frederick deG. Harlow
c/o Ryan Smith & Carbine, LTD.
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PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

No. 6535

APP. 1

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: U. S. Attorney
VS.	
DENNIS WILLIAM RATHBURN aka BILL COLLINS; LESTER MURRAY VAN BLERICOM aka WILLIAM T. WARREN aka WILLIAM TAFT WARREN; RICHARD ALLEN KLOBERDANCE aka RICHARD ALLAN KLOVERDANCE; JACK REX PIGMAN aka CLAUDE LEE BABB aka JOHN F. STANDS; MARY LEE BUTTS aka MARY LEE PIERCEY aka BARBARA K. FORSBERG	ATTORNEY FOR DEFENDANT Rathburn:L. John Cain, Esq. Burlington, Vt. Blericom:Angelo J. Cannizzaro, Esq. Burlington, Vt. Kloberdance: Kloberdance:D. Bruce Clewley, Esq. Montpelier, Vt. Pigman: Robert Erdmann, Esq. Burlington, Vt.
Atty. for Butts: James J. McNamara, Esq. Burlington, Vt.	

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed DEC 4 1967	Clerk	1/30	13887 - paid by L. John Cain	5.00	
J.S. 3 mailed 1/5/68	Marshal	1/30	13888 - paid by R. H. Erdmann	5.00	
Violation SEP 5 1974	Docket fee	1/31	C.D. #33		5.00
Title 18 U.S.C.					5.00
Secs 2, 371, 2314, 5851				10.00	10.00
Title 26 U.S.C.					
Sec. 5851					

DATE	PROCEEDINGS
1967	
Nov. 7	Filed Indictment for violation of Sections 2, 371, 2314, Title 18 USC and Section 5851, Title 26, USC.
" "	Issued Warrant for Arrest of each Defendant and delivered same to Marshal for service.
" 8	Defendant Dennis William Rathburn, aka etc. in Court with his attorney L. John Cain, Esq. was arraigned and pleaded not guilty to Indictment in Counts 1, 2 & 3.
" "	Defendant Lester Murray Van Blericom aka etc. in Court with his attorney Angelo J. Cannizzaro, Esq. who waived reading of Indictment, was arraigned and pleaded not guilty to Counts 1, 2 & 3.
" "	Defendant Richard Allen Kloberdance, aka etc. in Court with his attorney D. Bruce Clewley, Esq. who waived reading of Indictment, was arraigned and pleaded not guilty to Counts 1, 2 & 3.
" "	Defendant Mary Lee Butts, aka etc. in Court with her attorney James J. McNamara, Esq. who waived reading of Indictment, was arraigned and pleaded not guilty to Counts 1, 2 & 3.
" "	Mr. McNamara for Defendant Butts states to Court that he desires to

DATE		PROCEEDINGS
1967		
Nov. 8		file Motion, followed by Mr. Clewley for Defendant Kloberdance.
"	"	Ordered that parties have until November 15, 1967, to submit Motions.
"	"	Mr. Cannizzaro moves that Defendant Van Blericom be released on his own recognizance.
"	"	Ordered: Motion denied.
"	"	Mr. Clewley moves that Defendant Kloberdance be released on his own recognizance.
"	"	Ordered: Motion denied.
"	"	Ordered that bail in the sum of \$ 5,000.00 as to each Defendant be continued.
"	"	Mr. Cain made statements to the Court as to the physical condition of Defendant Rathburn.
"	"	Court directed the U. S. Marshal to look into the situation.
"	"	Mr. Cannizzaro for Defendant Van Blericom moves that money mailed to Defendant be released to Defendant.
"	"	Ordered: Motion granted.
"	"	Ordered that Defendants be remanded to custody of U. S. Marshal for want of bail.
Nov. 10		Filed Motions of Defendant Mary Lee Piercey and Certificate of Service.
"	13	Filed Defendant Richard Allan Kloberdance's Motion for Severance.
"	15	" Motions of Defendant Dennis Rathburn and Certificate of Service.
"	15	" Motions of Defendant Lester Murray Van Blericom and Certificate of Service.
"	17	Filed Warrant for Arrest of Defendant Dennis William Rathburn, a/k/a Returned served.
"	"	Filed Warrant for Arrest of Defendant Lester Murray Van Blericom, a/k/a etc., Returned served.
"	"	Filed Warrant for Arrest of Defendant Richard Allen Kloberdance, a/k/a etc., Returned served.
"	"	Filed Warrant for Arrest of Defendant Mary Lee Butts, a/k/a, etc. Returned served.
Nov. 21		In open Court before Judge Gibson, Defendants in Court with their attorneys. L. John Cain, Esq. for Def't. Rathburn; Angelo J. Cannizzaro, Esq. for Def't. VanBlericom; D. Bruce Clewley, Esq for Def't. Kloberdance; James McNamara, Esq. for Def't. Butts.
"	"	Hearing on Motions of Def't. Rathburn, Def't. Van Blericom, Def't. Kloberdance and Def't. Piercey.
"	"	U. S. Attorney makes statements to the Court followed by Ass't. U. S. Attorney for Government. Mr. Cannizzaro for Def't Van Blericom makes statements to the Court.
"	"	Ordered that the United States produce and make available copies of Statements obtained or furnished by F.B.I. or other Agents of the United States from any of the Defendants. (What applies to one Defendant applies to all.)
"	"	Ordered that Minutes of the Grand Jury not be made available at the present time but they should be available in the Courtroom and prior to cross-examination of any Government witness that testified before the Grand Jury.
"	"	Ordered that the Government disclose the names of potential witnesses but need not disclose a summary of what they are going to testify
"	"	Ordered that discovery inspection of things obtained from or belonging to the defendants obtained from others by seizure be made availa

DATE	PROCEEDINGS
1967	
Nov. 21	Ordered that Government furnish Counsel for Defendants all evidence of an exculpatory nature.
"	Ordered that the Government furnish the defendants with any and all information known to the Government of statements or promises, inducements, or reward of any kind or nature, made to any witness, that the Government intends to use.
"	Ordered that Government have available at the trial all State, County or Police Department reports having to do with matters referred to in the indictments.
"	Mr. Cain for defendant Rathburn makes statements to Court followed by Ass't. U. S. Attorney for Government, re illegal arrest.
"	Francis Louis Constantine was called as a witness for Government, was sworn by Clerk, but did not testify, as Mr. Cain for defendant Rathburn waived hearing this matter until trial time.
"	Ordered No. 10 (Defendant Rathburn's motions) is waived at this time.
"	Mr. Clewley for defendant Kloberdance makes statements to Court followed by Ass't. U. S. Attorney for Government. Mr. McNamara for defendant Piercey makes statement to the Court followed by Ass't. U. S. Attorney for Government.
"	Ordered statements that were made by the defendants to the investigators whether they are F.B. I. or State Troopers be made available.
"	Ordered Motions for severance denied.
"	Mr. Cannizzaro for defendant Van Blericom makes statements to the Court.
"	Ordered that we will not have separate trials on separate counts.
"	Mr. Cain for defendant Rathburn makes statements to the Court.
"	Ordered Ruling on suppression can be raised at the time of trial.
"	Ordered that trial be set for December 4 at 1:30 P.M.
" 28	Filed Order re payment of fees to Mrs. Gerald Snyder. Mailed copy to Attys. and delivered copies to U. S. Marshal.
" 29	In open Court before Judge Gibson, defendant Jack Rex Pigman, a/k/a 10. in Court with his attorney Robert H. Erdmann, Esq., was arraigned and pleaded not guilty to Counts 1, 2 & 3.
"	Ordered that bail be continued in the sum of \$5,000.00.
"	Mr. Erdmann states to Court if same ruling on previous motions of other defendants is made as to defendant Pigman, no motions for this defendant will be made.
"	Court states same ruling applies to defendant Pigman as to other defendants.
"	Mr. Erdmann moves for separate trial as to defendant Pigman.
"	Ordered: Motion granted.
"	Mr. Erdmann moves that all defendants be permitted to consult one another for purpose of preparing for trial.
"	Ordered: Motion granted, with U. S. Marshal or Deputy present, also attys. may be present.
"	Ordered: Defendant Pigman remanded to custody of U. S. Marshal for want of bail.
" 30	Filed Warrant for Arrest of Defendant Jack Rex Pigman, aka, returned served. 11.
Dec. 1	Filed five(5) Government Subpoenas to Testify returned served. 12.
" "	" eight(8) Government Subpoenas to Produce Document or Object returned served. 13.
" 4	" six Governments' Subpoenas to Testify returned served. 14.
" "	" four Governments' Subpoenas to Produce Document or Object

DATE 1967	PROCEEDINGS
Dec. 4	returned served.
" "	Filed Officer's return on copy of Governments Document or Object.
" 4	Trial By Jury begun before Judge Gibson as to Defendant Dennis William Rathburn, aka; Defendant Lester Murray Van Blericom, aka.; Defendant Richard Allen Klobberdance, aka.; and Defendant Mary Lee Butts, aka. -- U. S. Attorney and Ass't. U. S. Attorney for Government; L. John Cain, Esq. for Defendant Rathburn; Angelo J. Cannizzaro, Esq. for Defendant Van Blericom; D. Bruce Clewley, Esq. for Defendant Klobberdance; and James J. McNamara, Esq. for Defendant Butts.
" "	A Jury was impaneled by the Clerk.
" "	Ordered: that two alternate Jurors be impaneled by the Clerk and
" "	two alternate Jurors were impaneled by the Clerk.
" "	The oath to Petit Jurors in Criminal cases was administered to the
" "	Jury.
" "	U. S. Attorney for Government made opening statements to the Jury.
" "	All Defendants reserve the right to make opening statements.
" "	Ordered: Motions granted.
" "	Mr. McNamara for Def't. Butts moves that witness to be sworn is legal
" "	guardian of defendant Butts and should not testify.
" "	Ordered: Overruled.
" "	The following witnesses, sworn by Clerk, were examined for Government:
" "	Phrona C. Piercey and Raymond Orlich.
" "	Mr. Cain for Defendant Rathburn moves that all witnesses be excluded
" "	from the Courtroom until they testify or used in rebuttal --
" "	with U. S. Attorney agreeing, it is
" "	Ordered: Motion granted.
" 5	In Chambers - present - U. S. Attorney and Ass't. U. S. Attorney for
" "	Government. Mr. Cannizzaro for Def't. Van Blericom, Mr. Clewley
" "	for Def't. Klobberdance. Also Mr. Paige, Mr. McDonald and Mr.
" "	Christianson, Deputy Marshals and Acting Deputy Marshal; def'ts
" "	Van Blericom and Klobberdance also present.
" "	Mr. Clewley for Def't Klobberdance makes statements to Court followed
" "	by Mr. Radigan for Government. Court makes Statements to Def't
" "	Klobberdance.
" "	Ordered: Change of plea from not guilty to guilty is accepted as to
" "	Counts 2 and 3. Count 1 will be dismissed at time of sentencing
" "	Ordered: That a pre-sentence investigation be made.
" "	Mr. Cannizzaro for Def't Van Blericom makes statements to Court fol-
" "	lowed by Mr. Radigan for Gov't. Court makes statements to
" "	Def't Van Blericom.
" "	Ordered: Change of plea from not guilty to guilty is accepted as to
" "	Counts 2 and 3. Count 1 will be dismissed at time of sentencing
" "	Ordered: That a pre-sentence investigation be made.
" "	Trial resumed - in open Court - Jury not present.
" "	Def't Van Blericom, asks, has leave of Court to, and does withdraw his
" "	plea of not guilty and pleads guilty to Counts 2 and 3.
" "	Def't Klobberdance, asks, has leave of Court to, and does withdraw his
" "	plea of not guilty and pleads guilty to Counts 2 and 3.
" "	U. S. Attorney states that Count 1 will be dismissed at time of sen-
" "	tencing.
" "	Ordered: That sentence be deferred, and a pre-sentence investigation
" "	be made.
" "	Ordered: That defendants Van Blericom and Klobberdance be remanded to

DATE 1967	PROCEEDINGS
Dec. 5	custody of U. S. Marshal for want of bail.
" "	Statements were made to Court by Mr. Cain for def't Rathburn and
" "	Mr. McNamara for def't Butts followed by U. S. Attorney for
" "	Gov't.
" "	Court declares a mis-trial as to defendants Rathburn and Butts.
" "	U. S. Attorney makes statements to Court re: having def't Pigman
" "	joined at same time as defendants Rathburn and Butts.
" "	Ordered: Def't Pigman to be in Court December 6, 1967 at 9:30 A.
" "	M. to stand trial with def'ts Rathburn and Butts.
" "	In open Court - Jury present. Court states that defendants Van
" "	Blericom & Kloberdance have pleaded guilty to Counts 2 and 3
" "	of the Indictment and Court has declared a mis-trial as to
" "	def'ts Rathburn and Butts. A new Jury will be impaneled.
" "	The Jury is discharged from further consideration of the case.
" "	Ordered: That Marshal and Clerk secure 25 talesmen who are to
" "	report tomorrow morning.
" "	Ordered: That def'ts Rathburn and Butts be remanded to custody of
" "	U. S. Marshal for want of bail.
" "	In Chambers - present - U. S. Attorney, Ass't. U. S. Attorney, Mr.
" "	Cannizzaro, Mr. Clewley, Mr. McNamara and Mr. Cain. Confer-
" "	ence re alleged threatening of potential witnesses.
" "	The following witnesses, sworn by Clerk, were examined for Gov't:
" "	Mrs. Cash Piercey, Mrs. Dessie Snyder and Miss Clara Snyder.
" 6	Filed one Government Subpoena to Testify returned served. 17.
" "	Filed one Government Subpoena to Produce Document or Object re-
" "	turned served. 18.
" "	In open Court - Jury not present. U. A. Attorney for Gov't. moves
" "	that order granting separate trial for def't Pigman be revoked
" "	and that def't Pigman be joined with def'ts Rathburn and Butts.
" "	Statements made to Court by Mr. Erdmann for def't Pigman re Order
" "	granting separate trial.
" "	Ordered: Previous Order reversed and that trial proceed against
" "	the three remaining defendants.
" "	Trial by Jury begun before Judge Gibson as to Defendant Dennis
" "	William Rathburn, aka; Defendant Jack Rex Pigman, aka; and
" "	Mary Lee Butts, aka. U. S. Attorney and Ass't. U. S. Attorney
" "	for Government. L. John Cain, Esq. for Def't Rathburn; Robert
" "	H. Erdmann, Esq. for Def't Pigman; and James J. McNamara, Esq.
" "	for Def't Butts.
" "	A Jury was impaneled by the Clerk.
" "	Ordered: That two alternate Jurors be impaneled by the Clerk and
" "	two alternate Jurors were impaneled by the Clerk.
" "	The Oath on Examination of Jurors, Oath to Petit Jurors in Civil
" "	Causes and Oath to Petit Jurors in Criminal Cases was admin-
" "	istered to the Jury by the Clerk.
" "	In open Court - Jury not present. U. S. Attorney for Gov't. made
" "	statements to Court re information given to newspaper reporter.
" "	In open Court - Jury present. U. S. Attorney made opening state-
" "	ments to Jury for Gov't.
" "	All defendants reserve the right to make opening statements.
" "	Ordered: Motions granted.
" "	Court states that all Government witnesses to testify be excluded
" "	from the Courtroom until they testify or to be used in rebut-
" "	tal.
" "	The following witnesses, sworn by Clerk, were examined for Govern-

DATE 1967	PROCEEDINGS
Dec. 6	ment. Phrona Piercey, Raymond Orlich, Mrs. Henrietta V. Cooke,
" "	Robert J. Wright, George Douglas Ross and Thomas Meyer Anderson.
" "	Mr. Erdmann for Def't Pigman moves to strike testimony of Mr. Orlich
" "	in-so-far as it concerns as to Express Money Orders.
" "	Ordered: Motion denied.
" "	In open Court - Jury not present. U. S. Attorney for Gov't. moves
" "	that Barbara Van Blericom and Clarice Kloberdance be transferred
" "	as Gov't witness - to be used as defendants witnesses. Mrs.
" "	Van Blericom and Mrs. Kloberdance are to be kept separate from
" "	Gov't witnesses on another floor where they would not be in a
" "	position to talk to Gov't witnesses.
" "	Mr. Erdmann for def't Pigman makes statements to Court followed by
" "	Mr. Cain for def't Rathburn and Mr. McNamara for def't Butts.
" "	Ordered: Motion granted. Mrs. Van Blericom and Mrs. Kloberdance to
" "	be separated from all Government witnesses and not allowed to
" "	talk to Government witnesses. May be privileged to talk with
" "	Def'ts at a reasonable time arranged by the Marshal. To be
" "	moved from 3rd floor down to 2nd floor.
" "	Mr. Cain for def't Rathburn made statements to Court re exhibits.
" "	Ordered: Decision reserved.
" 7	Filed two Government Subpoenas to Produce Document or Object returne
" "	served.
" "	Trial resumed.
" "	The following witnesses, sworn by Clerk, were examined for Governmen
" "	Donald Dean Pringle, Clara A. Snyder, Paul W. Hayes, Mary Lou
" "	Fowler, Anthony Henry Bushway, Albert J. Vezina and Earl E.
" "	Williams.
" "	In open Court - Jury not present. U. S. Attorney for Gov't moves
" "	Court to review the hearing, in Chambers, on December 5 relative
" "	to witnesses Clara Snyder and Dessie Snyder.
" "	Mr. Cain for def't Rathburn made statements to Court followed by Mr.
" "	Erdmann for def't Pigman and Mr. McNamara for Def't Butts.
" "	Ordered: Witness Clara Snyder and Dessie Snyder not be released for
" "	a few days.
" "	Mr. Erdmann for def't Pigman makes statements to Court re witness Hay
" "	staying for future questioning.
" "	Ordered: That Grand Jury minutes will be examined by Court and then
" "	made available to attorneys if a discrepancy exists.
" "	Mr. McNamara for def't Butts makes statements to Court followed by Mr
" "	Cain for def't Rathburn.
" "	Ordered: That witness Clara Snyder and Dessie Snyder are excused fro
" "	further questioning and may return home.
" "	Mr. Erdmann made statements to Court for def't Pigman re Grand Jury
" "	minutes be made available, followed by U. S. Attorney for Gov't.
" "	Mr. Erdmann for def't Pigman stated that Special Agent Bruce G.
" "	Erickson in his report states that witness Hayes was unable to
" "	identify def't Pigman.
" "	Ordered that witness Hayes be further cross-examined by Mr. Erdmann
" "	for def't Pigman.
" "	Mr. Erdmann for def't Pigman moves that Bruce G. Erickson, Special
" "	Agent, F B I be subpoenaed and brought to Court to testify.
" "	Ordered: Motion granted.
" 8	Filed Government Subpoena to Produce Document or Object returned ser
" "	Trial resumed. In open Court - Jury not present. Hearing on defend
" "	ants' motions to suppress certain evidence and exhibits - illeg

DATE 1967	PROCEEDINGS
Dec. 8	arrest, search and seizure and constitutional rights.
" "	The following witnesses, sworn by Clerk, were examined for Government: George O. Patch and James E. Nolan, Jr.
" "	The following witnesses, sworn by Court, were examined for Government: Robert Pellon, Sgt. Francis Louis Constantine, Albert O. Axten.
" "	Government rests re hearing.
" "	Dennis William Rathburn, sworn by Court, was examined for Defendant Rathburn.
" "	Mr. Erdmann for def't Pigman moves that all witnesses be excluded from Courtroom until they testify.
" "	Ordered: Motion granted.
" "	Record shows that Counsel for defendants are being handed a transcript of minutes of trooper Nolan taken before Grand Jury.
" 11	Filed two Government Subpoenas to Testify returned served. 21.
" "	Government Subpoena to Produce Document or Object returned served. 22.
" "	Trial resumed. In open Court - Jury not present.
" "	As a result of the hearing last Friday (12-8-67) this Court rules: 1) That the arrest was legal. 2) That the search and seizure was legal. 3) That the defendants were promptly and adequately informed of their constitutional rights, and 4) That the warrant of arrest was not illegal nor was it unreasonably executed.
" "	Jury present - The following witnesses, sworn by Court, were examined for Government: Bruce G. Erickson, Marion C. Street, Robert A. Frazer, Armand J. Beltrami and George E. Kesek.
" "	The following witnesses, sworn by Clerk, were examined for Government: David B. DuPrul, Conrad J. Estivill, Harold Wendell Fitts, Cynthia J. Piro, Carl L. Barteau and Romeo J. Sironi.
" 12	Filed Government Subpoena to Produce Document or Object returned served. 23.
" "	Trial resumed. In open Court - Jury present.
" "	The following witnesses, sworn by Clerk, were examined for Government: Donald B. Perkins, Romeo J. Sironi, Pamela K. Higgins, James E. Smith, Raymond Ronald Jacobs, Dario C. Giannoni, Catherine C. Lamphere, George O. Patch, Robert R. Pellon, Francis Louis Constantine, James E. Nolan, Jr., and Albert O. Axten.
" "	Mr. Erdmann for Def't Pigman moves that the full report of witness Perkins be made available at this time.
" "	Ordered: Motion denied.
" "	U. S. Attorney for Gov't moves that 3 pages from exhibit 61 be removed from record book and renumbered 61-A; 61-B and 61-C.
" "	Ordered: Motion granted.
" "	Mr. Cain for Def't Rathburn and Mr. McNamara for Def't Butts moves that testimony of witness Smith be stricken.
" "	Ordered: Motions denied.
" "	Record may show that minutes of Grand Jury re witness Constantine was given to def'ts Attorneys.
" "	In open Court - Jury not present. Court instructed U. S. Marshal to remove all ammunition from Courtroom and to make Courtroom available for the three defendants and their Counsel.
" "	Record may show that records of witness Donald B. Perkins were handed to Mr. Erdmann for Def't Pigman.

DATE 1967	PROCEEDINGS
Dec. 13	Trial resumed. In open Court - Jury present.
"	Albert O. Axten was recalled and further examined for Government.
"	Mr. McNamara for def't Butts moves for a mistrial re testimony of
"	witness Axten.
"	Ordered: Motion overruled.
"	Government rests.
"	In open Court - Jury not present - Considered at the close of the
"	Government's case, Mr. Cain for def't Rathburn moves for a
"	Judgment of Acquittal on Counts 1, 2 and 3.
"	Mr. Erdmann for def't Pigman moves for a Judgment of Acquittal on
"	Counts 1, 2 and 3.
"	Mr. McNamara for def't Butts moves for a Judgment of Acquittal on
"	Counts 1, 2 and 3.
"	Statements made to the Court by Ass't. U. S. Attorney for Gov't.
"	Ordered: Motions denied as to each defendant - for the present.
"	In open Court - Jury present.
"	Defendant Rathburn rests.
"	Defendant Pigman rests.
"	Defendant Butts rests.
"	Evidence closed.
"	In open Court - Jury not present. Ass't. U. S. Attorney for Gov't
"	made statements to Court re Def't Pigman being joined in trial
"	with Def'ts Rathburn and Butts.
"	At the close of all the evidence, Mr. Cain for Def't Rathburn re-
"	news his motion for a Judgment of Acquittal.
"	Mr. Erdmann for Def't Pigman renews his motion for a Judgment of
"	Acquittal.
"	Mr. McNamara for Def't Butts renews his motion for a Judgment of
"	Acquittal.
"	Ordered: Motions denied as to each defendant - for the present.
"	Mr. Erdmann for Def't Pigman made statements to Court re preparation
"	of case.
"	Mr. McNamara for Def't Butts renews his motion for a Judgment of
"	Acquittal.
"	Ordered: Motion overruled.
"	In open Court - Jury present. Opening arguments were made to the Jury
"	by U. S. Attorney for Government.
"	In open Court - Jury not present. Court inquires of Counsel for
"	defendants if it is their desire that it charge to Jury as
"	to failure of defendants to take the stand or satisfied with
"	standard charge.
"	Mr. Erdmann for Def't Pigman requests to show copy of charge to
"	Def't Pigman.
"	Ordered: Request denied.
"	Mr. Cain for Def't Rathburn made statements to Court.
"	Court will give regular charge to the Jury.
"	In open Court - Jury present: - U. S. Attorney continues to make open-
"	ing arguments to Jury for Government followed by Mr. Cain for
"	Def't Rathburn; Mr. Erdmann for Def't Pigman and Mr. McNamara
"	for Def't Butts.
"	Closing arguments were made to the Jury by Ass't U. S. Attorney for
"	Government.
"	Filed Government's Requests to charge.
14	Trial resumed. In open Court Jury present.
"	Ordered that George A. Bemis be appointed foreman of the Jury.

DATE	PROCEEDINGS
1967	
Dec. 14	At 9:45 A. M. the Court began his charge to the Jury concluding at 10:27 A. M.
"	At 10:52 A. M. the Jury retire to deliberate the case.
"	Ordered that the two alternate Jurors be excused from further consideration of the case.
"	Thomas W. Sorrell, Alan J. Parber, Harry B. McDonald, Marlene Jolley, Kathryn Carr, Victor Christiansen and Howard Laduk were sworn by the Clerk as Officers in charge of Jury.
"	Ordered: That the Marshal provide meals for the Jury and Officers in Charge thereof during their deliberation of the case.
"	At 3:22 P.M. the Jury come into Court and report a verdict of guilty as to Counts 1, 2 and 3 as to Defendants Dennis William Rathburn aka Bill Collins; Jack Rex Pigman, aka Claude Lee Bobb aka John F. Stands; Mary Lee Butts aka Mary Lee Piercey aka Barbara K. Forsberg.
"	Ordered: That sentences be deferred, and pre-sentence investigations be made.
"	Ordered: That Defendants be remanded to custody of U. S. Marshal for want of bail.
"	Mr. Erdmann for Defendant Pigman moves that Clerk poll the Jury.
"	Ordered: That the Clerk poll the Jury. Clerk polled the Jury.
"	Ordered: That bail continue in the sum of \$5,000.00 as to each Defendant.
"	18 Filed Government's Subpoena to Produce Document or Object returned unserved. 25.
Dec. 18	Filed Defendant, Jack Rex Pigman's Motion for Judgment of Acquittal Notwithstanding the Verdict and in the Alternative, for a new Trial and Affidavit of Service. 26.
Dec. 21	Filed Motions of Defendant Mary Lee Piercey and Certificate of Service. 27.
"	21 Findings on Defendants' Motions Challenging Validity of Arrest and of the Search. Mailed copy to U. S. Atty., Mr. McNamara, Mr. Cain & Mr. Erdmann. 28.
1968	
Jan. 22	In Court before Judge Gibson, Hearing on Defendant Jack Rex Pigman's Motion of Acquittal notwithstanding the verdict and in the alternative, for a new trial. Assistant U. S. Attorney for Government; L. John Cain, Esq. for Defendant William Rathburn; Angelo J. Cannizzaro, Esq. for Def't. Lester Murray Van Blericom; D. Bruce Clewley, Esq. for Def't. Richard Allen Kloberdance; Robert Erdmann, Esq. for Def't. Jack Rex Pigman; James J. McNamara, Esq. for Def't. Mary Lee Butts.
"	Defendant Pigman in Court with his attorney Robert H. Erdmann, Esq..
"	Statements were made to the Court by Mr. Erdmann for Def't. Pigman, followed by Ass't. U. S. Atty. for Government.
"	Ordered: Motion denied on each ground.
"	Mr. Pigman made statements to the Court.
"	Filed Judgment and Commitment and Judgment and Order of Probation -- as to Defendant Jack Rex Pigman --- Defendant/is hereby committed to the custody of the Attorney General for imprisonment for a period of ten years on count 1 of said Indictment and five years on each count of counts 2 & 3 of said Indictment, the sentence on each count to run consecutively with the sentence on each other count. 29.

DATE 1968	PROCEEDINGS
Jan. 22	It is adjudged that the execution of sentence of imprisonment on count 3 of said Indictment is suspended and Defendant Pigman is placed on probation for a period of five years to commence after completion of sentence and parole on counts 1 and 2 of said Indictment.
" "	Ordered: that Defendant Pigman remanded to custody of U. S. Marshal and informed of his right to appeal.
" "	Hearing on Defendant Mary Lee Butts, aka, Mary Lee Piercy's Motions. Defendant Butts in Court with her attorney, James McNamara, Esq. Statements were made to the Court by Mr. McNamara for Def't. Bu followed by Ass't. U. S. Atty. for Government.
" "	Ordered: Motions denied on all grounds.
" "	Statements were made to Court by Defendant Butts.
" "	Filed Judgment and Commitment and Judgment and Order of Probation as to Defendant Butts --- Defendant Butts is hereby committed to the custody of the Attorney General for treatment and supervision pursuant to Chapter 402 of Title 18, United States Code until discharged by the Division as provided in Section 5017 of said Chapter 402, as to Counts 1 and 2 of said Indictment; and for imprisonment for a period of five years as to count 3 of said Indictment.
" "	The Court finds that said Defendant Butts is nineteen years of age; that the offense of which she is convicted in counts 1 and 2 is punishable by imprisonment under Sections 371 and 2314, Title 18, United States Code, and accordingly has sentenced said Defendant under Section 5010(b) of the Federal Youth Correction Act.
" "	It is adjudged that execution of sentence of Imprisonment on count of said Indictment is suspended and the Defendant Butts is placed on probation for a period of five years to commence after completion of sentence on Count 1 and 2.
" "	Ordered: Defendant Butts remanded to custody of U. S. Marshal and informed of her right to appeal.
" "	Defendant Lester Murray VanBlericom, aka, in Court with his attorney Angelo J. Cannizzaro, Esq. for sentence on counts 2 and 3 of Indictment.
" "	Statements made to the Court by Ass't. U. S. Attorney for Government followed by Mr. Cannizzaro for Def't. VanBlericom.
" "	Defendant VanBlericom made statements to the Court.
" "	Assistant U.S. Attorney moves that count 1 of Indictment be dismissed as to Def't. VanBlericom.
" "	Ordered: count 1 of Indictment as to Def't. VanBlericom is dismissed.
" "	Filed Judgment and Commitment and Judgment and Order of Probation as to Defendant VanBlericom -- Defendant VanBlericom is hereby committed to the custody of the Attorney General for imprisonment for a period of five years on each count of counts 2 and 3 of Indictment herein, sentence on each count to run consecutively the sentence on each other count.
" "	It is adjudged that execution of sentence of imprisonment on count 3 of said Indictment is suspended and Defendant VanBlericom is placed on probation for five years to commence after completion of sentence and parole on count 2 of said Indictment.
" "	Ordered: That Defendant VanBlericom be remanded to custody of U. S. Marshal and informed of his right to appeal.

DATE	PROCEEDINGS
1968	
Jan. 22	Defendant Richard Allen Kloberdance, aka, in Court with his attorney, D. Bruce Clewley, Esq. for sentence on counts 2 & 3 of Indictment.
" "	Statements were made to the Court by Ass't. U. S. Attorney for Government, followed by Mr. Clewley for Def't. Kloberdance.
" "	Ass't. U. S. Attorney moves to dismiss count 1 of said Indictment as to Def't. Kloberdance.
" "	Ordered: Count 1 of said Indictment as to Def't. Kloberdance is dismissed.
" "	Filed Judgment and Commitment and Judgment and Order of Probation as to Def't. Kloberdance -- Defendant Kloberdance is hereby committed to the custody of the Attorney General for imprisonment for a period of five years on each count of counts 2 and 3 of said Indictment herein, sentence on each count to run consecutively with the sentence on each other count. 32.
" "	It is adjudged that execution of sentence of imprisonment on count 3 of said Indictment is suspended and Defendant Kloberdance is placed on probation for five years to commence after completion of sentence and parole on count 2 of said Indictment.
" "	Ordered: that Defendant Kloberdance is remanded to custody of U. S. Marshal and informed of his right to appeal.
" "	Defendant Dennis William Rathburn, aka, in Court with his attorney, L. John Cain, Esq. for sentence on counts 1, 2 & 3 of Indictment.
" "	Statements were made to the Court by Ass't. U. S. Attorney for Government, followed by Mr. Cain for Def't. Rathburn.
" "	Filed Judgment and Commitment and Judgment and Order of Probation as to Defendant Rathburn --- Defendant Rathburn is hereby committed to the custody of the Attorney General for imprisonment for a period of ten years on count 1 of said Indictment and five years on each count of counts 2 & 3 of said Indictment, the sentence on each count to run consecutively with the sentence on each other count. 33.
" "	It is adjudged that execution of sentence of imprisonment on count 3 of said Indictment is suspended and Defendant Rathburn is placed on probation for a period of five years to commence after completion of sentence and parole on counts 1 and 2 of said Indictment.
" "	Ordered: Defendant Rathburn is remanded to custody of U. S. Marshal and informed of his right to appeal.
" 22	Filed Defendant Jack Rex Pigman's Motion for Leave to Appeal in Forma Pauperis and Affidavit of Service. 34.
" 30	Notice of Appeal of Defendant Rathburn. Mailed copy to U. S. Attorney, Mr. Cannizzaro, Mr. Clewley, Mr. Erdmann and Mr. McNamara. 35.
" "	Notice of Appeal of Defendant Pigman. Mailed copy to U. S. Attorney, Mr. Cain, Mr. Cannizzaro, Mr. Clewley and Mr. McNamara. 36.
" "	Mailed Statement of Docket Entries to Clerk, U. S. Court of Appeals, for Defendants Rathburn and Pigman.
" "	Filed Defendant Piercey's Motion to arrest Judgment of guilty on Count 3. 37.
" "	Filed Defendant Rathburn's Motion for Leave to file Appeal in Forma Pauperis. 38.

DATE		PROCEEDINGS
1968		
Jan. 31		Filed Certified copy of Judgment and Commitment and Judgment and Order of Probation as to Defendant Lester Murray Van Blericom, aka, returned served. Defendant VanBlericom committed to Federal Reformatory at Petersburg, Virginia.
" "	"	Certified copy of Judgment and Commitment and Judgment and Order of Probation as to Defendant Richard Allen Kloberdance, aka, returned served. Defendant committed to Federal Reformatory at Petersburg, Virginia.
Feb. 1		Hearing before Judge Gibson on Defendant Piercey's Motion to arrest judgment of guilty on Count III. U. S. Attorney and Ass't. U. S. Attorney for Government. James McNamara, Esq. for Defendant Piercey.
" "		Statements were made to the Court by Mr. McNamara for Defendant Piercey.
" "		Ordered: Motion considered in the nature of appeal to protect Defendant Piercey's rights on appeal.
" "		Decision reserved on Motion to arrest judgment of guilty on Count III as to Defendant Piercey.
" "		Hearing on Defendant Rathburn's Motion for leave to appeal in forma pauperis.
" "		Defendant Rathburn in Court with his attorney L. John Cain, Esq..
" "		Statements were made to the Court by Mr. Cain for Defendant Rathburn.
" "		Filed Petition to proceed in forma pauperis.
" "		Mr. Cain moves to arrest judgment of guilty on Count III as to Defendant Rathburn.
" "		Decision reserved on Motion of Defendant Rathburn to arrest judgment of guilty on Count III.
" "		Statements made to the Court by Defendant Rathburn. Court states that he will ask Marshal to make report.
" "		Decision reserved on Motion of Defendant Rathburn to appeal in forma pauperis.
" "		Filed Notice of Withdrawal of Appearance of L. John Cain, Esq. for Defendant Rathburn.
" "		Statements were made to the Court by U. S. Attorney for Government as to guns shown to jury during trial.
" "		Statements were made to the Court by Mr. Cain for Defendant Rathburn as to guns.
" "		Hearing on Defendant Pigman's Motion for leave to appeal in forma pauperis.
" "		Defendant Pigman in Court with his attorney Robert Erdmann, Esq..
" "		Statements were made to the Court by Mr. Erdmann for Defendant Pigman.
" "		Mr. Erdmann for Defendant Pigman moves to arrest judgment of guilty on Count III.
" "		Decision reserved on Motion of Defendant Pigman to arrest judgment of guilty on Count III.
" "		Statements were made to the Court by the U. S. Attorney for the Government
" "		Statements were made to the Court by Mr. Pigman. Court states that he will ask Marshal to make report.
" "		Decision reserved on Motion of Defendant Pigman for leave to appeal in forma pauperis.
" 19		Filed Certified Copy of Judgment and Commitment and Judgment and Order of Probation returned served. Defendant Dennis William Rathburn, aka Bill Collins committed to Federal Prison at Lewisburg, Penn.
" "	"	Certified Copy of Judgment and Commitment and Judgment and

DATE 1968	PROCEEDINGS	
Feb. 19	Order of Probation returned served. Defendant Jack Rex Pigman, aka Claude Lee Babb, aka John F. Stands committed to Federal Prison at Lewisburg, Penn.	44.
" 27	Filed Order denying Motions to proceed on Appeal in Forma Pauperis on the grounds that such an Appeal is frivolous. Mailed copy to U. S. Attorney, Mr. Erdmann, Mr. Cain, Mr. McNamara and Clerk, U. S. Court of Appeals.	45.
Mar. 7	" Motion to extend time for filing and docketing Appeal of Dennis William Rathburn.	46.
" "	" Motion to extend time for filing and docketing Appeal of Jack Rex Pigman, and Affidavit of Service.	47.
" "	" Order extending time for filing and docketing the Record on Appeal. Copy mailed to attorneys.	48.
" 27	" / Certified copy of Judgment and Commitment and Judgment and Order of Probation returned served -- Defendant/delivered on March 20, 1968 to Federal Reformatory for Women, Alderson, West Virginia.	49.
Apr. 26	Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, New York, New York. Attorneys notified.	
Sep. 16	Filed Defendant Pigman's Motion to join in Defendant Piercey's Motion to arrest Judgment of guilty on Count 3 and Certificate of service.	50.
Oct. 16	Filed Defendant Rathburn's Motion to join in Defendant Piercey's Motion to arrest Judgment of guilty on Count 3 and Certificate of Service.	51.
" "	In open Court, before Judge Gibson, Hearing on Defendant Piercey's Motion to arrest Judgment on Count 3. U. S. Attorney for Government; James McNamara, Esq. for Defendant Piercey.	
" "	Court instructs Mr. McNamara to submit memorandum within one week.	
" "	U. S. Attorney makes statements to the Court.	
Dec. 19	Filed Order that the Judgment Orders suspending sentences in count III are vacated as to the three moving Defendants; Mary Lee Piersey, Jack Rex Pigman and William Rathburn. The Judgment Orders, suspending sentences in count III are also hereby vacated as to Defendants, Richard Allen Kloberdance and Lester Murray Van Blericom/ and Count III is dismissed. Copy mailed to U. S. Attorney and Attorneys.	52.
Dec. 20	Mailed supplemental record/ on appeal, Paper Nos. 50, 51 & 52, to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N. Y.. Attorneys notified.	
1969		
July 10	Filed Transcript of Hearing on Motion to Set Aside Count 3 of the Indictment (February 1, 1968).	53.
" "	" Transcript of Hearing on Motions for Leave to Appeal in forma pauperis (February 1, 1968).	54.
Sept. 15	Filed Mandate and Opinion from the U. S. Court of Appeals -- Judgments of said District Court be and they hereby are affirmed. Mailed copy to attorneys.	55.
1970		
July 9	Filed copy of Order from Supreme Court of the United States -- Petition for Writ of Certiorari is denied as to Def. Pigman.	
"	Mailed copy to U. S. Attorney, Mr. Erdmann and Mr. Pigman.	56.
" 20	" Petitioner Rathburn's Motion to Proceed in Forma Pauperis.	57.
" "	" Petitioner Rathburn's Petition for Reduction of Sentence and Affidavit.	58.

DATE	PROCEEDINGS
1970	
July 27	Filed Order denying Defendant Dennis William Rathburn's Motion to Reduce Sentence. Mailed copy to Attorneys and Mr. Rathburn.
Sep. 9	" Defendant's Motion for Reduction of Sentence and Certificate of Service.
Oct. 13	Hearing before Judge Leddy on Defendant Pigman's Motion for reduction of sentence. George W. F. Cook, U. S. Attorney; David A. Gibson, Ass't. U. S. Attorney for Government; Robert H. Erdmann, Esq. for Defendant Pigman.
" "	Filed Defendant Pigman's Memorandum of Law.
" "	Defendant in Court with his attorney, Robert H. Erdmann, Esq..
" "	Statements made to Court by Mr. Erdmann for Defendant Pigman.
" "	Mr. Pigman makes statements to the Court.
" "	Mr. Cook for Government makes statements to the Court.
" "	Court makes inquiries of Probation Officer Picher.
" "	Decision reserved.
Nov. 6	Filed Order reducing sentence -- that the sentence imposed on the defendant on January 22, 1968, under Count II of the indictment filed in this Court on November 7, 1967, be modified to read as follows: It is adjudged that the defendant be committed to the custody of the Attorney General, or his duly authorized agent, for imprisonment for a period of three years, the same to be served concurrently with the sentence imposed on defendant on Count I of said indictment. Mailed copy to U. S. Attorney, Mr. Erdmann and Mr. Pigman.
" 9	" Marshal's return of service on Order reducing sentence.
1972	
July 29	" Certificate Setting Aside Conviction as to Defendant Mary Lee Butts.
1974	
Aug. 6	In open Court before Judge Coffrin, Defendant Pigman present with his Attorney, Frederick deG. Harlow, Esq., for re-sentencing in accordance with Court's order in Civ. 73-236. George W.F. Cook for Government.
" "	Statements made to Court by Mr. Harlow and states resentencing applied to Count I only, and that Deft. Pigman has already served seven years, and moves that Deft. be permitted to return to society.
" "	Court states Deft. was paroled two years ago and shortly thereafter breached his parole.
" "	Mr. Cook makes statements to Court re facts of case.
" "	Taken under consideration. Government to submit memorandum submitted previously to Judge Holden, and Mr. Harlow to resubmit proposed judgment.
" "	Further statements made to Court by Mr. Harlow re existence of guns; allowed by Deft. Pigman.
Aug. 19	Filed Order reducing sentence/-- that the sentence imposed on the defendant on January 22, 1968, under Count I of the Indictment filed in this Court on November 7, 1967, be modified to read as follows: It is Adjudged that the defendant be committed to the custody of the Attorney General, or his duly authorized representative, for imprisonment for a period of nine years. No sentence is imposed under Ct. II of the Indictment as the sentence thereon imposed on the defendant January 22, 1968, as modified by Order of this Court filed November 6, 1970, has now been served by its terms.

PROCEEDINGS

1974	
Aug. 26	Filed Deft. Pigman's Notice of Appeal. Mailed copy to U. S. Attorney, Frederick deG. Harlow, Court Reporter, Judge Coffrin, and Clerk, U. S. Court of Appeals for the Second Circuit. 66.
" 27	Mailed Instructions and Forms A & B to Frederick deG. Harlow, Esq. 67.
Sept. 11	Filed CJA 21 - Authorization & Voucher for Expert or Other Services. 68.
" 16	" Appointment of Frederick deG. Harlow, Esq., for Deft. 69.
" 23	" Transcript of hearing held August 6, 1974. 70.
" 30	" Authorization to incur expense to obtain transcript. 71.
Oct. 3	Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attorneys notified. 72.
" 2	Filed transcript of hearing on 10-13-70. 71.
" 3	" transcript of hearings and trial (Vol. I, II & III) docketed at request of Deft's counsel. 72.

Civ. 73-236
Jury demand date:

~~GOLDEN~~ COFFIN

Form No. 106 Rev.

TITLE OF CASE		ATTORNEYS				
<p>JACK REX PIGMAN</p> <p>vs.</p> <p>UNITED STATES OF AMERICA</p>		<p>For plaintiff:</p> <p>Jack Pigman, pro se</p> <p>#86029-132</p> <p>P. O. Box 1000</p> <p>Leavenworth, Kansas 66048</p>				
		<p>Robert H. Erdmann, Esq.</p> <p>% Dinse, Allen & Erdmann, Esqs.</p> <p>186 College Street</p> <p>Burlington, VT</p>				
		<p>Frederick deG. Harlow, Esq.</p> <p>% Ryan, Smith & Carbine, Esqs.</p> <p>Rutland, VT 05701</p>				
		<p>For defendant:</p> <p>Robert H. Erdmann, Esq.</p> <p>186 College Street</p> <p>Burlington, VT 05401</p> <p>U. S. Attorney</p>				
<p>STATISTICAL RECORD</p>		<p>COSTS</p>	<p>DATE</p>	<p>NAME OR RECEIPT NO.</p>	<p>REC.</p>	<p>DISB.</p>
<p>5 mailed SEP 5 1973</p>		<p>Clerk</p>				
<p>6 mailed SEP 5 1974</p>		<p>Marshal</p>				
<p>asis of Action:</p>		<p>Docket fee</p>				
<p>c. 2255, T 28, USC</p>		<p>Witness fees</p>				
<p>tion arose at: 2</p>		<p>Depositions</p>				

DATE 1973	PROCEEDINGS	Date Order or Judgment Noted
g. 23	Filed Petition to proceed in forma pauperis and affidavit.	1.
Sept. 4	Filed Order that Petitioner may file and the Clerk and Marshal accept Motion without prepayment of required fees.	2.
Oct. 11	Filed Motion that Court review the sentencing procedure conducted in Criminal No. 6535.	3.
"	Issued Summons.	4.
13	Filed Summons returned served.	5.
19	Filed Appointment of Robert H. Erdmann, Esq. for Plaintiff.	6.
v. 12	" Government's Motion to Dismiss and/or Motion for Summary Judgment.	7.
" 21	Filed Appointment of Frederick DeG. Harlow, Esq. for Pltff.	8.
974		
Jan. 21	Filed Memorandum of Law in opposition to the Government's Motion to Dismiss.	9.
	22 Filed supplemental to Memorandum of Law in opposition to Government's Motion to Dismiss.	10.
b. 6	" Government's Memorandum in reply to Petitioner's Memorandum	11.
r. 18	Filed Statement of Facts, Conclusions of Law and Order--The Government's motion to dismiss is granted on the first, second and forth claims stated in the complaint; the motion is denied as to the third claim. Mailed copy to Attorneys, and Pltff.	12.
pr. 1	At the Call of the Calendar before Judge Holden, it was	13.
"	ORDERED: Case passed.	14.
" 17	Filed Pltff's Motion for Reconsideration.	15.
"	" Affidavit of Sandy Smith.	16.
"	" Affidavit of Ronald R. Boyer.	17.
"	" Affidavit of Jack R. Pigman.	18.
" 29	Filed Government's waiver of Plaintiffs presence at May 10, 1974 hearing.	19.
y 2	Filed Pltff.'s request that Pltff. be present at hearing on 5-10-74.	20.
10	In Court before Judge Holden. Frederick deG. Harlow, Esq. for Pltr.; William B. Gray, Esq. for Govt.	21.
"	Filed Affidavit of Plaintiff.	22.
"	Hearing on Pltff's Motion that Court review the sentencing procedures conducted in Cr. No. 6535; and on Pltff's Motion for re-consideration of Court's Order entered 3-18-74.	23.
"	Statements made to Court by Mr. Harlow; followed by Mr. Gray; further statements made by Mr. Harlow and Mr. Gray.	
"	Decision reserved.	
"	ORDERED: Pltff's Motion for re-consideration of Court's order entered 3-18-74 is denied.	
ne 3	Filed Pltff.'s Motion for Transfer upon resentencing and Memorandum.	
"	Filed Pltff.'s Motion for Deletion of convictions subsequent to original sentencing from pre-sentence report to be used upon sentencing and memorandu.	
10	Filed Order--Petitioner Pigman to be returned to Vermont for re-sentencing in Criminal No. 6535. Proceedings to be transferred to Judge Coffrin and Pre-Sentence Investigation to be made. Mailed copy to Attorneys, Petitioner and Prob. Off.	
g. 6	Filed Pigman's Proposed Order for Resentencing.	
"	Filed letter of U.S. Attorney dated 6-4-74; and Govt.'s Memorandum in opposition to Deft.'s proposed order for resentencing; proposed order for resentencing and memorandum in opposition to Deft.'s motion for deletion of conviction subsequent to original sentencing.	

DATE	PROCEEDINGS	De Jud.
1974		
Aug. 19	In open Court before Judge Coffrin, defendant present with his attorney, Frederick deG. Harlow, Esq., for resentencing. Jerome O'Neill, Esq. for Government.	
"	Mr. Harlow moves to have certain "things" deleted from the presentence report.	
"	Ordered: Motion denied.	
"	Statements made to Court by Mr. Harlow, Mr. Pigman and Mr. O'Neill.	
"	Court lists convictions of Mr. Pigman that will not be considered in the Court's resentencing of Mr. Pigman.	
"	Filed Order Reducing Sentence (see Cr. 6535)	
Sept. 9	Pltf's Notice of Appeal: Mailed copy to Mr. Pigman, Attorney Harlow, U. S. Attorney, Court Reporter, Judge Coffrin and Clerk, U. S. Court of Appeals for the Second Circuit.	
" 10	Pltf's Amendment to Notice of Appeal. Mailed copy to U. S. Attorney, Attorney Harlow, Court Reporter, Judge Coffrin and Clerk, U. S. Court of Appeals for the Second Circuit.	
Oct. 3	Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attys. notified.	
" 18	Filed Order for Delivery of Pltf returned served.	
Nov. 1	" Marshal's return on Order of Court.	

19

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF VERMONT
FEDERAL BUILDING
BURLINGTON, VERMONT 05401

EDWARD J. TRUDELL
CLERK

P. O. BOX 945
(802 862-6501)

September 11, 1974

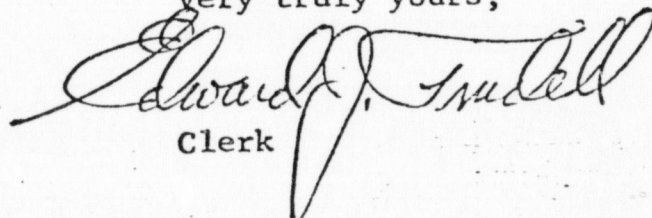
Frederick deG. Harlow, Esq.
Ryan, Smith & Carbine, Ltd.
Attorneys at Law
Rutland, Vt.

Dear Fritz:

Because of the close relationship between Civil Action No. 73-236, Pigman vs. U.S.A. and Criminal Action No. 6535, United States vs. Jack Rex Pigman et al, this writer feels that possibly the civil matter should accompany the criminal record on appeal when the case is docketed in the Court of Appeals.

If you concur, would you kindly send me your request that the civil matter accompany the criminal matter on appeal.

Very truly yours,



Clerk

EJT:rer

Copy to: Hon. George W. F. Cook
U. S. Attorney
Federal Building
Rutland, Vt.

RYAN SMITH & CARBINE, LTD.

LAW OFFICES
MEAD BUILDING

RUTLAND, VERMONT 05701

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JOHN J. ZAWISTOSKI
RICHARD S. SMITH
FREDERICK deG. HARLOW
STELLA B. HACKEL
E. PATRICK BURKE

REPLY TO:
POST OFFICE BOX 310

September 16, 1974

The Honorable Edward J. Trudell, Clerk
United States District Court
Federal Building
Burlington, Vermont 05401

Re: Jack Rex Pigman - Civil Action No. 73-236
Criminal Action No. 6535

Dear Ed:

In accordance with your letter of September 11, 1974, I hereby request that the two above-numbered matters be combined on appeal. I note, in reviewing my voluminous file, that Mr. Pigman's Notice of Appeal filed June 7, 1974 was returned to me. I believe that should remain in your file, and I enclose the original herewith. Mr. Pigman did not request appointed counsel and is participating in the case and on appeal, as is his prerogative.

Further, I hereby request that the Record on Appeal include the transcript of the original trial, including the transcript of the original sentencing, a transcript of the hearing on Defendant Pigman's motion for reduction of sentence (held October 13, 1970 before Judge Leddy), and the transcripts of the resentencing hearings held August 5, 6 and 19 before Judge Coffrin. I have not ordered transcripts of the arguments before Judge Holden but the Government might wish to do so. I do request that all papers, exhibits and memoranda filed in the civil action be made part of the Record on Appeal.

I understand that the Form B filed by me on September 5, 1974 was incorrect in designating Francis Cumming as the court reporter; Mr. Vesper was the court reporter on August 5 and 6, and George LaVictoire was the court reporter on August 19, 1974. I will file a new Form B if you so desire.

If there are any questions concerning the Record on Appeal, I will be glad to render any assistance I can.

Sincerely yours,

Frederick deG. Harlow

FdeGH/ccl
Enclosure

cc: Ramona Roberts, Appeals Coordinator
George W. F. Cook, Esq., United States Attorney

6a

Grand Jury Indictment

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,

vs.

DENNIS WILLIAM RATHBURN aka BILL COLLINS;
LESTER MURRAY VAN BLERICOM aka WILLIAM
T. WARREN aka WILLIAM TAFT WARREN; RICH-
ARD ALLEN KLOBERDANCE aka RICHARD AL-
LAN KLOVERDANCE; JACK REX PIGMAN aka
CLAUDE LEE BABB aka JOHN F. STANDS; MARY
LEE BUTTS aka MARY LEE PIERCEY aka BAR-
BARA K. FORSBERG.

Secs. 2, 371, 2314, Title 18 U. S. C. and
Sec. 5851, Title 26, U. S. C.

COUNT I

The Grand Jury charges:

On or about the 29th day of September, 1967, DENNIS WILLIAM RATHBURN aka BILL COLLINS; LESTER MURRAY VAN BLERICOM aka WILLIAM T. WARREN aka WILLIAM TAFT WARREN; RICHARD ALLEN KLOBERDANCE aka RICHARD ALLAN KLOVERDANCE; JACK REX PIGMAN aka CLAUDE LEE BABB aka JOHN F. STANDS; MARY LEE BUTTS aka MARY LEE PIERCEY aka BARBARA K. FORSBERG, with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce from Burlington, in the District of Vermont, to Los Angeles,

Grand Jury Indictment.

California, a falsely made and forged security, to wit, Travelers Express Money Order, Number 200 3181 873, Travelers Express Company, Inc., drawn on Crocker-Citizens National Bank, Los Angeles, California, dated September 18, 1967, payable to John F. Stands, in the amount of \$150,000, bearing endorsement of John F. Stands; knowing the same to be falsely made and forged; in violation of Section 2314, Title 18, United States Code.

COUNT II

The Grand Jury charges:

From on or about the 1st day of September, 1967, and continuously thereafter up to and including the date of filing of this indictment, in the District of Vermont, and elsewhere, DENNIS WILLIAM RATHBURN aka BILL COLLINS; LESTER MURRAY VAN BLERICOM aka WILLIAM T. WARREN aka WILLIAM TAFT WARREN; RICHARD ALLEN KLOBERDANCE aka RICHARD ALLAN KLOVERDANCE; JACK REX PIGMAN aka CLAUDE LEE BABB aka JOHN F. STANDS; MARY LEE BUTTS aka MARY LEE PIERCEY aka BARBARA K. FORSBERG, hereinafter referred to as the defendants, wilfully and knowingly did combine, conspire, confederate and agree together with each other, and with divers other persons whose names are to the Grand Jury unknown, to commit an offense against the United States, that is, with unlawful and fraudulent intent, to transport and cause to be transported in interstate commerce, falsely made and forged securities, that is, Travelers Express Money Orders, Travelers Express Company, Inc., drawn on the Crocker-Citizens National Bank, Los Angeles, California, knowing

Grand Jury Indictment.

the same to be falsely made and forged in violation of Section 2314, Title 18, United States Code.

1. It was a part of said conspiracy that the defendants would and did travel among themselves and with others from the State of Oregon to the District of Vermont.

2. It was further a part of said conspiracy that the defendants would and did have in their possession during said interstate travel a great number of stolen Travelers Express Money Orders, knowing them to have been stolen, and being a part of the Money Orders stolen on or about September 13, 1967, from the Plaid Pantry, 2809 South East Holgate, Portland, Oregon, and being a part of the Money Orders stolen on or about September 14, 1967, from the Plaid Pantry, 7407 South East 52nd Avenue, Portland, Oregon.

3. It was further a part of said conspiracy that the defendants would and did have in their possession during said interstate travel a check writer, to wit, a Paymaster Check Protector, Number 7K88932, taken in a burglary from the Southgate Glass Company, 12364 South East 80th Street, Portland, Oregon, on or about September 16, 1967.

4. It was further a part of said conspiracy that the defendants would and did use the said check writer, to wit, a Paymaster Check Protector, Number 7K88932, to complete the said stolen Travelers Express Money Orders, and by such use to deceive the person or persons to whom the said Money Order would be presented.

5. It was further a part of said conspiracy that the defendants would and did assume and use fictitious names and diverse addresses in completing and passing the said

Grand Jury Indictment.

stolen Travelers Express Money Orders and thereby unlawfully and fraudulently obtaining money, goods and services.

5. (a) It was further a part of said conspiracy that the defendants by uttering and passing the said stolen, falsely made and forged Travelers Express Money Orders would and did transport and cause the same to be transported in interstate commerce.

6. It was further a part of said conspiracy that the defendants would conceal and hide, and cause to be concealed and hidden, the purpose of the acts done in the furtherance of the conspiracy; in violation of Section 371, Title 18, United States Code.

OVERT ACTS

In pursuance of said unlawful conspiracy and for the purpose of effecting the objects thereof, the defendants committed the following Overt Acts in the District of Vermont, within the jurisdiction of this Court:

(1) Each and every act of the defendants as described in Count I of this indictment is hereby re-alleged and designated as Overt Acts.

(2) On or about September 29, 1967, in the District of Vermont, the said defendants presented Travelers Express Money Order 200 3181 893, in the amount of \$75.00, at the I. G. A. Store, Route 2, South Hero, Vermont and obtained goods and money.

(3) On or about September 29, 1967, in the District of Vermont, the said defendants presented Travelers Express

Grand Jury Indictment.

Money Order 200 3181 885, in the amount of \$75.00, at the F. W. Woolworth Store, Church Street, Burlington, Vermont, and obtained goods and money.

(4) On or about September 29, 1967, in the District of Vermont, the said defendants presented Travelers Express Money Order 200 3181 889, in the amount of \$75.00, at Magram's The Fashion Shop, 81 Church Street, Burlington, Vermont, and obtained goods and money.

(5) On or about September 30, 1967, in the District of Vermont, the said defendant registered under the name of Bill Collins, and occupied rooms at the Capital Motel, Montpelier, Vermont, and thereafter, on or about October 1, 1967, registered at and occupied additional accommodations at Sowma's Four Star Motel, Montpelier, Vermont.

(6) On or about September 30, 1967, in the District of Vermont, the said defendants presented Travelers Express Money Order 200 3181 887, in the amount of \$75.00, at Rogers Boot Shop, Barre, Vermont, and obtained goods and money.

(7) On or about September 30, 1967, in the District of Vermont, the said defendants presented Travelers Express Money Order 200 3181 886, in the amount of \$75.00, at Giannoni Jewelry Store, Barre, Vermont, and obtained goods and money.

(8) On or about September 30, 1967, in the District of Vermont, the said defendants presented Travelers Express Money Order 200 3181 888, in the amount of \$75.00, at the Homer Pitts Company, Barre, Vermont, and obtained goods and money.

Grand Jury Indictment.

(9) On or about September 30, 1967, in the District of Vermont, the said defendants presented Travelers Express Money Order 200 3182 791, in the amount of \$150.00, at the Country Store, Montpelier, Vermont, and obtained goods and money.

COUNT III

The Grand Jury charges:

On or about the 2nd day of October, 1967, in the District of Vermont, DENNIS WILLIAM RATHBURN aka BILL COLLINS; LESTER MURRAY VAN BLERICOM aka WILLIAM T. WARREN aka WILLIAM TAFT WARREN; RICHARD ALLEN KLOBERDANCE aka RICHARD ALLAN KLOVERDANCE; JACK REX PIGMAN aka CLAUDE LEE BABB aka JOHN F. STANDS; MARY LEE BUTTS aka MARY LEE PIERCEY aka BARBARA K. FORSBERG, wilfully and knowingly did possess a firearm, that is, a sawed-off shotgun, Kessler Arms Corporation, Model 288 FR, 16 gauge, having a barrel length of 10¼ inches, which had not been registered with the Secretary of the Treasury, or his delegate as required by Section 5841, Title 26, United States Code; in violation of Section 5851, Title 26, United States Code.

A TRUE BILL

LEON R. ELDRED,
Foreman.

Joseph F. Radigan,
United States Attorney.

Judgment and Commitment and Judgment and Order
of Probation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA,

v.

JACK REX PIGMAN, aka CLAUDE LEE BABB, aka
JOHN F. SANDS.

No. 6535.

On this 22nd day of January, 1968, came the attorney for the government and the defendant appeared in person, and by Counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of unlawfully and with fraudulent intent causing to be transported in interstate commerce falsely made and forged security; conspiring to commit an offense against the United States, that is, causing interstate transportation of falsely made and forged securities and committing overt acts by presenting said securities at certain stores; and unlawfully possessing a firearm not registered with the Secretary of the Treasury as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

*Judgment and Commitment and Judgment and Order
of Probation.*

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten years on count 1 of said Indictment and five years on each count of counts 2 & 3 of said Indictment, the sentence on each count to run consecutively with the sentence on each other count.

IT IS ADJUDGED that execution of sentence of imprisonment on count 3 of said Indictment is suspended and defendant is placed on probation for a period of five years to commence after completion of sentence and parole on counts 1 and 2 of said Indictment.

IT IS ORDERED that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the Defendant.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

ERNEST W. GIBSON,
Chief United States District Judge.

EDWARD J. TRUDELL,
Clerk.

17a

Order Dismissing Count III.

Endorsed: Filed January 22, 1968.

Edward J. Trudell,
Clerk.

A True Copy. Certified this 22nd day of January, 1968.

(Signed) EDWARD J. TRUDELL,
Clerk.

(By)
Deputy Clerk.

Order Dismissing Count III

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

UNITED STATES,

vs.

DENNIS WILLIAM RATHBURN aka BILL COLLINS;
LESTER MURRAY VAN BLERICOM, aka WILLIAM
T. WARREN, aka WILLIAM TAFT WARREN;
RICHARD ALLEN KLOBERDANCE, aka RICHARD
ALLAN KLOVERDANCE; JACK REX PIGMAN aka
CLAUDE LEE BABB aka JOHN F. STANDS; MARY
LEE BUTTS aka MARY LEE PIERCEY aka
BARBARA K. FORSBERG.

Criminal No. 6535.

Subsequent to sentencing, motions were filed by Mary Lee
Piercey, Jack Rex Pigman and William Rathburn by their
attorneys seeking an arrest of judgment and execution of

Order Dismissing Count III.

sentence of imprisonment and on Count III. All five defendants although convicted on Count III had received suspended sentences.

After a hearing on the motions and upon consideration of the fact that on January 29, 1968, the day after sentencing, the United States Supreme Court in *Haynes v. United States*, 36 L. W. 4164, declared unconstitutional the statute setting forth the crime of which the defendants were convicted in Count III, it is hereby ordered that the judgment orders suspending sentences are vacated as to the three moving defendants and Count III is dismissed.

Richard Allen Kloberdance and Lester Murray Van Blericom pled guilty to Count III and also received suspended sentences. The judgment orders suspending sentences are also hereby vacated as to them and Count III is dismissed.

This order is made without objection by the United States Attorney for the District of Vermont.

ERNEST W. GIBSON,
Chief Judge.

Done at Brattleboro, in the District of Vermont, this
19 day of December, 1968.

Endorsed: Filed December 19, 1968.

Leonard W. Lafayette,
Deputy Clerk.



UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States of America :
v. : Criminal No. 6535
Jack Rex Pigman :

ORDER REDUCING SENTENCE

In the above entitled matter, defendant's application for certiorari was denied on July 9, 1970. Thereafter, on September 9, 1970, defendant filed in this Court motion for reduction of sentence. Hearing on said motion was held in Burlington, Vermont, on October 13, 1970, and upon consideration of the matters brought forth at said hearing and after further investigation by the Probation Officer for the District of Vermont, and after consultation with the Probation Officer, it is hereby ORDERED:

That the sentence imposed on the defendant on January 22, 1968, under Count II of the indictment filed in this Court on November 7, 1967, be modified to read as follows:

It is adjudged that the defendant be committed to the custody of the Attorney General, or his duly authorized agent, for imprisonment for a period of three years, the same to be served concurrently with the sentence imposed on defendant on Count I of said indictment.

ORDERED:

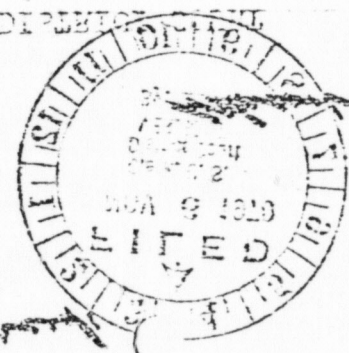
That the sentence imposed on the defendant on January 22, 1968, under Count II of the indictment filed in this Court on November 7, 1967, be modified to read as follows:

It is adjudged that the defendant be committed to the custody of the Attorney General, or his duly authorized agent, for imprisonment for a period of three years, the same to be served concurrently with the sentence imposed on defendant on Count I of said indictment.

Done at Burlington in the District of Vermont,
this 6th day of November, 1970.

Bernard J. Leddy
Chief Judge

RECEIVED BY THE DIRECTOR



JACK REX PIGMAN

vs.

UNITED STATES OF AMERICA

Civil Action

No. 73-236

33

ORDER

Upon consideration of Petitioner's application to file a motion pursuant to 28 U.S.C.A. Sec. 2255, in forma pauperis, and the affidavit attached thereto, it is hereby

ORDERED: That the Petitioner may file and the Clerk of this Court shall accept said Motion without prepayment of the required filing fee and that the Petitioner shall not be required to pay the Marshal's fees for service of the same.

Dated at Rutland in the District of Vermont, this 4th day of September, 1973.

James S. Hoden
CHIEF, U. S. DISTRICT JUDGE

Filed September 4, 1973

Edward J. Muller
Clerk.

2.

34
U.S. DISTRICT COURT
DISTRICT OF VERMONT
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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Jack Rex Pigman

v.

United States of America

Civil Action

File No. 73-236

STATEMENT OF FACTS, CONCLUSIONS OF LAW AND ORDER

Jack Rex Pigman, in a trial by jury in this District, was found guilty on December 14, 1967 of the three offenses presented in the indictment. Count I accused Pigman of causing a falsely made and forged security to be transported in interstate commerce in violation of 18 U.S.C. § 2314, on Count II of conspiring to violate Count I (18 U.S.C. § 371) and on Count III of possessing an unregistered sawed-off shotgun (26 U.S.C. §§ 5841, 5851). The trial judge, the late Honorable Ernest Gibson, imposed sentence on January 22, 1968, as follows:

Count I - ten years
Count II - five years to run consecutive to Count I
Count III - five years (consecutive) (execution suspended, probation for five years to begin upon completion of sentences on Counts I and II).

35
On December 19, 1968 Judge Gibson vacated the judgment order as to Count III and dismissed Count III under the authority of Haynes v. United States, 390 U.S. 85 (1963), which declared unconstitutional the statute underlying Count III. The Court of Appeals affirmed the conviction on Counts I and II on August 21, 1969. United States v. Rathburn and Pigman, 414 F.2d 767. Certiorari was denied by the United States Supreme Court on June 22, 1970. Pigman v. United States, 339 U.S. 912.

A motion for reduction of sentence under Fed. R. Crim. P. 35 was heard on October 13, 1970 by the late Honorable Bernard J. Leddy, then Chief Judge of the United States District Court for

the District of Vermont. Petitioner argued that reduction was necessary to correct a "great disparity" between petitioner's sentence and those of the co-defendants who plead guilty to one count and did not stand trial on the other counts. United States v. Pigman, Crim. No. 6535 (D.C.Vt. October 13, 1970). Judge Leddy entered an order reducing sentence on November 6, 1970, which modified the original sentence to the extent that the sentence on Count II was reduced to three years to be served concurrently with the ten year sentence on Count I.

The pending motion filed in forma pauperis on September 11, 1973 seeks to vacate and set aside the judgment and conviction in Criminal No. 6535, pursuant to 28 U.S.C. § 2255. Counsel was assigned as provided in the Criminal Justice Act. The petition was met by the Government's ^{combined} ~~continued~~ motions to dismiss and for summary judgment. The case is now presented on the Government's motion.

The complaint, in substance, is based on four contentions: 37

First. There was an improper joinder of offenses by reason of joining Count III (possession of an unregistered shotgun in violation of 26 U.S.C. § 5851) with Count I (transportation in interstate commerce of falsely made and forged securities in violation of 18 U.S.C. § 2314) and Count II (conspiracy to violate Count I).

Second. Certain incriminating evidence resulting from an illegal search in violation of the petitioner's fourth amendment rights used at his trial.

Third. The petitioner was improperly sentenced in that the court based the sentence on a presentence report which contained "unconstitutional convictions."

Fourth. ^{is} Re-sentencing/required if the court based its sentence on Counts I and II on a conviction under Count II, which

count was later dismissed as "unconstitutional" under the authority of United States v. Hayes, 390 U.S. 85 (1968).

CONCLUSIONS

The issue of improper joinder was raised at the trial but was not presented on the appeal. The law is clear that a proceeding under the provisions of 28 U.S.C. § 2255 is not to be used for assigning errors which could have been raised on appeal. United States v. Gordon, 433 F.2d 313 (2d Cir. 1970). See United States v. Angelet, 265 F.2d 155 (2d Cir. 1959); Frimet v. United States, 293 F.Supp. 1126, 1127 (S.D.N.Y. 1968). Accordingly, the first claim will be dismissed.

The claim that incriminating evidence obtained by an illegal search is subject to the same infirmity. Petitioner was represented by competent counsel at his trial. There was an extensive suppression hearing during the course of the trial and following this hearing, on December 11, 1967, the court ruled that the arrest, search and seizure were legal. Although

the claim was available on appeal, the point was not presented to the appellate court. Under the authority of United States v. Gordon, supra, this issue is not open to review in this proceeding. 39.

The main question relied upon in the petitioner's brief concerns the influence of Count III on the sentence on Count I. It is claimed that Judge Gibson was impressed by the relationship of the verdict on Count III in imposing sentence on each count, specifically because of the existence of the shotgun.

In United States v. Sweig, 454 F.2d 181 (2d Cir. 1972) it was held that a sentencing judge has very broad discretion in imposing sentence within the statutory limits. In exercising that discretion he may and should consider matters which would be inadmissible at trial. See United States v. Tucker, 404 U.S.

443, 446 (1972); United States v. Schipani, 435 F.2d 26, 27 (2d Cir. 1970). Thus it would seem that if Judge Gibson did consider the shotgun in sentencing, it was within his discretion and would not be unconstitutional.

Petitioner further argues that the conviction on Count III, which was later dismissed as unconstitutional, led Judge Gibson to impose the maximum sentences on the securities (Count I) and conspiracy (Count II) counts. This court is mindful that in United States v. Tucker, supra, the Court held that if, at sentencing, a judge gives attention to convictions which were obtained unconstitutionally, the accused is entitled to have the sentence vacated and be returned for re-sentencing. Tucker has been applied to require re-sentencing where the original sentence was imposed in consideration of two or more counts, one of which counts later was determined to be founded on an unconstitutional statute. James v. United States, 476 F.2d 936 (8th Cir. 1973); Haynie v. United States, 474 F.2d 1051 (5th

Cir. 1973); Gareau v. United States, 474 F.2d 24 (6th Cir. 1973);
Taylor v. United States, 472 F.2d 1178 (8th Cir. 1973);
Martinez v. United States, 464 F.2d 1289 (10th Cir. 1972); cf.
McGee v. United States, 462 F.2d 243 (2d Cir. 1972).

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However, the facts in the record are not persuasive that Judge Gibson relied upon the conviction in Count III in imposing sentence on Counts I and II. It is apparent that Judge Gibson attached little significance to the Count III conviction, since he imposed only a suspended sentence on Count III while sentencing Pigman to ten years on Count I and five years consecutively on Count II. There were other compelling factors in the record that Judge Gibson relied on in the sentencing. The evidence against Pigman was overwhelming. Pigman, along with co-defendant Rathburn, was considered to be a leader in

an extended criminal enterprise in Vermont. Pigman was part of a group that carried loaded concealed weapons. Further, Pigman had been court-martialed while in the Armed Services and received an "Other than Honorable Discharge."

Clearly the sentencing court was cognizant of the offenses encompassed in Counts I and II which were committed while the defendant was carrying a loaded concealed weapon in his luggage and was prepared to use it, if necessary, to execute the crime. But the fact that the gun was not registered in compliance with the National Firearms Act, then in effect, was hardly the dominant factor. It was the custody of a dangerous weapon that aggravated the crime upon which sentence was imposed.

The defendant remarked in allocution -

"I don't believe, your Honor, there was any evidence in the trial, of any acts of violence."

Judge Gibson responded:

"Well you had the possibility, certainly, - you carried loaded guns around with you."

"Mr. Pigman: Your Honor, there was no evidence in this trial, your Honor, whatsoever, that I, myself, had any weapon."

The Court: You had your head (hand) on the suitcase which had the sawed-off shotgun in it."

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Absent any reference to the offense charged in Count III, I am convinced the trial court would have imposed the same sentence that was ordered had the gun been registered and this count had not been included in the indictment. Since there is no indication that Judge Gibson relied on the conviction under the unconstitutional statute, there is no cause for re-sentencing on the third ground advanced by the petitioner. This is confirmed by the fact that Judge Gibson suspended the sentence on this count and later vacated it entirely, without varying the sentences imposed on the other counts. See United States v. Tucker, supra, 404 U.S. at 448.

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The claim that Judge Gibson relied on prior convictions is borne out by the record. Whether these convictions were unconstitutionally derived in the light of Gideon v. Wainwright, 372 U.S. 335 (1963) remains an open question.

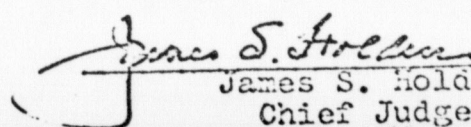
At the time of sentence Judge Gibson referred to the defendant's record of prior convictions. Later in the hearing before Judge Leddy, under Rule 35, the record of convictions recited in the presentence report was made known to the defendant and his counsel asserted that his record did not involve prison terms. Yet the point that these convictions were illegally obtained persists. It is not entirely removed by the fact that the convictions may not have resulted in a loss of liberty. See Argersinger v. Hamlin, 407 U.S. 25 (1972).^{1/} The first question is whether the previous convictions were unconstitutionally obtained; if so, would the sentence have been different if the court had known the previous convictions were unlawfully entered. United States v. Tucker, supra, 404 U.S. at 448.

Since these questions cannot be answered within the framework of the present record, the Government's motion to dismiss and for judgment on the ~~XXXXXX~~^{third} claim of the petition must be denied until further evidence is presented.^{2/}

Accordingly, it is hereby ORDERED:

That the Government's motion to dismiss is granted on the first, second and fourth claims stated in the complaint; the motion is denied as to the third claim.

Dated at Rutland, in the District of Vermont, this 15th day of March, 1974.


James S. Holden
Chief Judge

Footnotes

1/ The Government contends that initial error, if any, has been overcome when Judge Leddy reduced the sentence. However, the record indicates that Pigman's motion for reduction of sentence was based on the disparity between Pigman's sentence and those of the co-defendants and also upon the adjustments Pigman had made in his life. Nowhere in the record does it indicate that the reduction in sentence was due to a re-evaluation of sentencing to determine if Pigman's prior record contained any convictions based upon unconstitutional grounds.

Similarly, Pigman did not waive his right to file a collateral attack under 28 U.S.C. § 2255. It is true that a defendant may lose his right to file a § 2255 motion on a given ground by consciously and deliberately electing not to raise that ground at the time of conviction or on direct appeal. See Fay v. Noia, 372 U.S. 391 (1963); Brown v. Allen, 344 U.S. 443 (1952). However, when a motion is based upon a case (Tucker) which had not been decided when a person is sentenced, the motion cannot be presumed to be a waiver, express or implied, or an intentional by-passing of an opportunity to assert a known right. Mitchell v. United States, 482 F.2d 289, 292 (5th Cir. 1973).

2/ When a convicted defendant, who was indigent at the time of his conviction, collaterally attacks the conviction on right to counsel grounds, and the record shows that he was not represented by counsel or is silent regarding representation of counsel, then the party which defends the conviction has the burden of proving that the defendant was represented by counsel or that he waived his right to counsel. Carnley v. Cochran, 369 U.S. 506 (1962); Woods v. United States, 457 F.2d 185 (7th Cir. 1972); United States v. Lufman, 457 F.2d 165, 166 n.2 (7th Cir. 1972); Goodwin v. Smith, 439 F.2d 1180 (5th Cir. 1971); United States v. DuShane, 435 F.2d 187, 189-90 (2d Cir. 1970); Losieau v. Sigler, 406 F.2d 795 (8th Cir. 1969), cert. denied 396 U.S. 988; Wilson v. Coiner, 392 F.2d 210, 212-13 (4th Cir. 1968); Palmentere v. United States, 351 F.Supp. 167 (W.D.Mo. 1972). See Craig v. Beto, 458 F.2d 1131 (5th Cir. 1972); United States v. Wendt, 347 F.Supp. 647 (N.D.Ca. 1972). Conversely, if the record shows that the defendant was represented by counsel, the convicted defendant has the burden of impeaching the record. Oswald v. Crouse, 420 F.2d 373 (10th Cir. 1969); Losieau v. Sigler, supra; Wilson v. Wiman, 386 F.2d 968 (6th Cir. 1967), cert. denied 390 1042.

JUN 11 1974

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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Jack Rex Pigman

v.

United States of America

Civil Action

File No. 73-236

ORDER

This case seems to fit much of the pattern of United States v. Tucker, 404 U.S. 443 (1972). Indeed, the sentencing background presented to the late Chief Judge Gibson bears some similarity to the facts which Mr. Justice Blackmun regarded as controlling in his dissent - Id. at 450-452.

The petitioner has established, and the Government does not question, that some of the prior convictions presented to the sentencing court in 1968 were constitutionally invalid. Upon this showing there is no way this court in the present litigation can determine whether the sentence imposed in 1968 might have been different had Judge Gibson known that some of the previous convictions had been obtained without the aid of counsel under Gideon v. Wainwright, 372 U.S. 335 (1963).

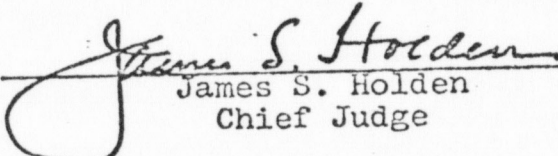
Upon these considerations it is ORDERED:

1. The petitioner Jack Rex Pigman shall be returned to the United States District Court for the District of Vermont for resentencing on Count I and Count II in Criminal No. 6535.

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2. The petitioner's request that the present proceeding be transferred to the criminal docket of the Honorable Albert W. Coffrin, United States District Judge for the District of Vermont, is granted.

3. A presentence investigation and report will be made prior to resentencing of the petitioner in accord with Rule 32(c) F.R.Cr.P. unless Judge Coffrin shall otherwise direct.

Dated at Rutland, in the District of Vermont, this 6th
day of June, 1974.


James S. Holden
Chief Judge

July 24, 1974

The Honorable Albert W. Coffrin
U.S. District Judge
Federal Building
Burlington, Vermont 05401

Re: PIGMAN, Jack Rex
Civil Action
File 73-236

Dear Judge Coffrin:

Pursuant to Judge Holden's Order of June 6, 1974 and our conference concerning the above matter, I have recently interviewed Jack Rex Pigman at the Burlington Correctional Center and wish to report as follows:

At the time of the Pigman trial before the late Judge E. W. Gibson, I was on sick leave, hence, the presentence investigation was initiated by the Probation Office for the Northern District of New York and the report was prepared and submitted by the Oregon Probation Office.

I am attaching copies of the presentence investigation dated January 10, 1968, Classification Study received from the U.S. Penitentiary, Lewisburg, April 15, 1968 as well as a Special Progress Report from the U.S. Penitentiary, Leavenworth, Kansas dated September 11, 1973.

The highlights of this material are as follows:

(1) On January 22, 1968 at Brattleboro, Vermont, following a verdict of guilty to a three-count indictment, Count I - Interstate Transportation of Stolen Property; Count II - Conspiracy and Count III - Possession of a sawed-off shotgun, Judge Gibson sentenced Pigman as follows:

The Honorable Albert W. Coffrin
U.S. District Judge

July 24, 1974

Count I	10 years
Count II	5 years consecutive to Count I
Count III	5 years; suspended; probation 5 years to begin upon completion of sentence in Counts I and II

(2) On March 28, 1968, Pigman was sentenced by the Honorable Richard Robinson, U.S. District Judge, District of Nebraska, to five years on each count of a two-count indictment charging him with violation of Title 18, USC, Sections 2312 and 2314 with sentence to run concurrently with each other, and also to run concurrently with the term being served by defendant and imposed by the U.S. District Court for the District of Vermont on January 22, 1968. Details of the offense appear on page 5 of the presentence report.

(3) On December 19, 1968, Judge Gibson ordered that the sentence imposed on Count III be vacated as the provision of Section 5851, Title 26, had been ruled unconstitutional by the Supreme Court on January 29, 1968.

(4) On August 22, 1969, the verdict rendered in the U.S. District Court for the District of Vermont as to Counts I and II was affirmed by the U.S. Court of Appeals for the Second Circuit.

(5) On November 6, 1970, following the filing of a motion for reduction of sentence, the late Judge B. J. Leedy issued the following order: that sentence imposed on January 22, 1968 under Count II of the indictment filed in this court on November 7, 1967 be modified to read as follows: It is adjudged that the defendant be committed to the custody of the Attorney General or his duly authorized representative, for imprisonment for a period of three years, the sentence to be served concurrently with the sentence imposed on defendant in Count I of said indictment (hence, sentence now being served by defendant amounts to ten years).

The Honorable Albert W. Coffrin
U.S. District Judge

July 24, 1974

(6) Jack Pigman was paroled from the U.S. Penitentiary, Leavenworth, Kansas, on January 17, 1972 to Cedar Rapids, Iowa and taken into custody by the Cedar Rapids Police Department on March 14, 1972 on a charge of breaking and entering. A parole violator warrant was issued March 27, 1972 but subject was later released on bond. On July 10, 1972, he was again arrested by the Cedar Rapids Police Department for attempting to elude police, disobeying a traffic signal and breaking and entering on June 14, 1972.

Subject was held in County Jail from July 10, 1972 until November 21, 1972 on which day he pled guilty in the District Court, Cedar Rapids, Iowa, to two counts of breaking and entering (March 14, 1972 and June 14, 1972). He was represented by Attorney William Olgner of Cedar Rapids. He was sentenced to one year in Linn County Jail and fined \$10.00. While serving his County Jail sentence on work release, he escaped therefrom April 3, 1973 and was apprehended in Omaha, Nebraska, on April 29, 1973. A parole violator warrant executed May 2, 1973 charged him with the following:

- (1) Breaking and Entering - March 14, 1972
- (2) Attempting to elude police and disobeying traffic signal - May 2, 1972
- (3) Breaking and Entering - June 14, 1972
- (4) Associating with persons engaged in criminal activities - June 14, 1972.
- (5) Breaking and Entering - November 21, 1972 when he was sentenced to one year in County Jail in Cedar Rapids, Iowa.

The Honorable Albert W. Coffrin
U.S. District Judge

July 24, 1974

(6) Escaping from Linn County Jail authorities.

(7) Leaving district without permission.

Pigman denied all charges except for charges 4, 5 and 6. On June 30, 1973, he was returned to the Leavenworth institution to serve the remainder of his Vermont sentence of 2084 days.

The authorities at the Terre Haute Penitentiary to which institution Pigman was transferred last month, have advised that petitioner is scheduled for a parole hearing in June of 1975. The records indicate that his full time will expire on January 14, 1979 and full time less 180 days will be July 18, 1978.

The petitioner denies that he participated in the robbery of the money orders or the guns, but admits passing some of the money orders in Vermont. He also contends that inasmuch as Judge Holden vacated his sentence of January 22, 1968, he is now entitled to get credit for all jail time. If I understand his reasoning correctly, his claim is that the 10-year sentence imposed by the late Judge Gibson actually started on October 2, 1967 (with credit for time spent in jail pending disposition). A 10-year sentence entitled him to ten days good time per month to be deducted from the "top":

10 years or 3,650 days

Less 1,200 days good time computed at 10 days per month

2,450 days balance to be served or six years, eight months and twenty days to June 14, 1974, Hence, he should now be "on the street".

However, officials of the Records Department of the Terre Haute institution who were recently contacted by the writer

The Honorable Albert W. Coffrin
U.S. District Judge

July 24, 1974

assure me that regardless of petitioner's computation of good time, he still owes the government 2,084 days and could possibly be held until July 18, 1978, if he does not make parole.

The writer is of the opinion that the only matter to be considered by the Court at this time is that of resentencing and that any computation of time should properly be done by the Bureau of Prisons after sentence is imposed.

Sincerely yours,

Paul J. Picher
Chief U.S. Probation Officer

Enc. (3)

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

AUG 21 1974

United States of America)

vs.)

Jack Rex Pigman)

Criminal No. 6535

ORDER REDUCING SENTENCE

By Order of this Court filed June 10, 1974, in Civil Action No. 73-236, Jack Rex Pigman vs. United States of America, defendant was ordered to be resentenced on Counts I and II of the Indictment in this matter. Defendant appeared before this Court together with his counsel, Frederick deG. Harlow, Esq. for this purpose on August 6, 1974, and, the proceedings on that date being adjourned, he further appeared, together with his counsel, before the Court on August 19, 1974. As a result of said proceedings, it is hereby ORDERED:

ENDORSED: Filed August 19, 1974
Germaine R. Atherton
Deputy Clerk

That the sentence imposed on the defendant on January 22, 1968, under Count I of the Indictment filed in this Court on November 7, 1967, be modified to read as follows:

It is Adjudged that the defendant be committed to the custody of the Attorney General, or his duly authorized representative, for imprisonment for a period of nine years.

No sentence is imposed under Count II of the Indictment as the sentence thereon imposed on the defendant on January 22, 1968, as modified by Order of this Court filed on November 6, 1970, has now been served by its terms.

Done at Burlington in the District of Vermont, this 19th day of August, 1974.

~~ALBERT W. COOPER III~~
United States District Judge

AUG 23 1974
APR 23 1974

COPY

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U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA)
)
V.) Criminal No. 6535
)
JACK REX PIGMAN)

NOTICE OF APPEAL

Notice is hereby given that Jack Rex Pigman, Defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order Reducing Sentence entered in this action on the 19th day of August, 1974.

DATED: August 23, 1974

Frederick deG. Harlow

Frederick deG. Harlow
A Member of the Firm of
Ryan, Smith & Carbine
Mead Building
Rutland, Vermont
Attorney for Defendant

(No response)

THE COURT: Now, when did Mr. Rathburn come into your picture of your life?

MR. VAN BLERICOM: This was approximately four to five months before we came on this trip.

THE COURT: Some time in June, would you say, of 1967?

MR. VAN BLERICOM: I believe it was after that, - after, - I'm not positive, Your Honor.

THE COURT: Did he have some hold over you?

MR. VAN BLERICOM: No material hold, no.

THE COURT: What do you mean, "material hold"?

MR. VAN BLERICOM: Well, I mean, he wasn't black-mailing me into doing these things, or anything of this nature.

THE COURT: Why wasn't your wife allowed to enter Canada when you were out there?

MR. VAN BLERICOM: I believe the reason that they wouldn't let us go across the border was because the girl that was with Mr. Kloberdance at the time, is pretty young-looking and I believe this is the reason, plus the fact that they told the authorities they were

a bearing in what he has done in this manner. Did you want to say anything to the Court?

MR. KLOBERDANCE: No.

THE COURT: Thank you, Mr. Clewley, now, Mr. Kloberdance, you can say anything that you would like to. This is your chance.

MR. KLOBERDANCE: I believe Mr. Clewley has covered it.

THE COURT: Now, Mr. Kloberdance, you don't have too good a record, do you? You were arrested for an assault with a dangerous weapon in 1964, is that correct?

MR. KLOBERDANCE: Yes, sir.

THE COURT: What was the weapon?

MR. KLOBERDANCE: It was a brake bar to a ratchet set.

THE COURT: Did you participate in the Southgate Glass Company burglary, out there in Portland?

MR. KLOBERDANCE: No, I did not.

THE COURT: That is, you did not have any part in stealing the check machine?

MR. KLOBERDANCE: I didn't know anything about it until it was already gotten. Until out on the road.

THE COURT: Did you participate in holding up different restaurants for these Travelers checks?

MR. KLOBERDANCE: Yes.

THE COURT: You did that with a pistol in your possession?

MR. KLOBERDANCE: No, I did not have a gun.

THE COURT: How much, how many payroll checks did you steal?

MR. KLOBERDANCE: I couldn't say, I didn't pay any attention to the payroll checks, Your Honor.

THE COURT: All right. What were you going to do when you ran out of these checks? You had a, what, 19 left, did you say, Mr., ----

MR. WHALEN: There were 16 or 17, Your Honor.

THE COURT: 16. What were you going to do for money when you ran out of those checks?

MR. KLOBERDANCE: What the other guys were going to do. I couldn't say, but I was going to head for home. I still had a job and the boss said he was going to be gone for a couple of weeks and I was going to go back.

THE COURT: Did you participate in the

target practice of all these weapons that you had?

MR. KLOBERDANCE: Yes, I did.

THE COURT: Including the shotgun?

MR. KLOBERDANCE: No.

THE COURT: Well, you did have, apparently, an unfortunately, a family life, but you've got some brothers and sisters that lead a pretty good life, apparently?

MR. KLOBERDANCE: Yes.

THE COURT: Now, is Clarice, that is your wife? Where did you marry her?

MR. KLOBERDANCE: Vancouver, Washington.

THE COURT: Is she a member of a motor cycle gang?

MR. KLOBERDANCE: No, she is not.

THE COURT: Are you sure?

MR. KLOBERDANCE: Yes.

THE COURT: In North Portland?

MR. KLOBERDANCE: She isn't a member of any motor cycle gang.

THE COURT: It looks to me like you are what we would term an anti-social being. Did Rathburn and Pigman instruct you to hold up these restaurants?

MR. KLOBERDANCE: Rathburn did.

THE COURT: Rathburn? Well, as I told Mr. Van Blericom, you are not going to, we are not going to tolerate violence of this kind in this District so far as we can help it. We try to enjoy freedom through law and order up here in the Green Mountain State. We are going to try to, and we are not going to stand for this kind of arrogance and violation of the laws of the United States.

Now, the sentence of the law in your case is, that on Count II, you are sentenced to five years in the custody of the Attorney General of the United States and on Count III, you are sentenced to five years in the custody of the Attorney General of the United States; that sentence will be suspended and your probation will start at either the termination of your parole, or your prison sentence, whichever may be the latest.

That means, that once you get out of the Federal Penitentiary, wherever you are sent, and off parole, then you will be on a five-year suspended sentence and if you violate the law again, you will then be, -and it is proved, - you will then be committed for another five years.

You are committed to the custody of the United States Marshal.

individual is indicative of a part of that lawlessness.

We would further submit, Your Honor, that this man has absolutely no respect for the rights of our fellow American citizens and the people of the United States have got to be protected from a person such as Defendant Rathburn and the activities which he has conducted in this case.

There is no question in our mind, Your Honor, that this Defendant was the motivating factor in bringing this group of people to Vermont. He had past associations here and had property here that he wished to pick up. And, I believe Mr. SIRONI, in his testimony in direct, at the time of the trial, brought out the fact to the Court and to the Jury, that this Defendant had been in Montpelier-Barre, Vermont area in the past and had taken off.

We would submit that it was this man who was one of the ring leaders in this group who brought this group of defendants and co-conspirators to this District where the crimes alleged were committed. Thank you, Your Honor.

THE COURT: Senator Cain?

MR. CAIN: If it Please the Court, I certainly feel that I am in no position to effectively

MR. RATHBURN: It is immaterial.

THE COURT: I had that checked and I had the St. Louis Records Center checked very carefully.

MR. RATHBURN: The what?

THE COURT: The St. Louis Records Center. That is where the records of the - all people who serve in the Armed Forces, of the United States, are kept. Now, they can make a mistake, but there is no record of your serving anywhere in the Coast Guard or any other arm of the United States services.

MR. RATHBURN: It is immaterial.

THE COURT: As far as I am concerned, the evidence that you are - of the, your guilt, was overwhelming.

Under your guidance, according to some people, these Travelers Express money orders were stolen and a Check Protector was stolen. You all came here together; you conspired together; you passed these checks on these people; once you got together, and had that planned; what one did, was what the other did. That is the law.

I agree with the Assistant United States Attorney that one of the cancers of our country is the failure to abide by the law.

we feel that the Jury has reached a very just verdict in this case, in view of all of the evidence that was presented.

Here again, information, Your Honor, was presented to our office by investigative agencies that disclose that this defendant was involved in a group, or a gang, of twelve individuals or so, in Portland, Oregon, area, who have committed a number of burglaries out there, armed robberies and passed fraudulent and forged checks in the Portland, Oregon, area.

This defendant, Your Honor, has not cooperated, to our knowledge, with any local authorities, whether in Vermont or in Oregon, or, with State authorities, or, with Federal authorities.

There are a number of unsolved crimes, the facts of which we believe and information presented to us, indicates this defendant knows.

We were also, Your Honor, informed that this Defendant was uncooperative with probation officer that was assigned by this Court to interview him.

We would submit, Your Honor, that this is indicative of this man's attitude towards the rights of law-abiding citizens, that he has total disregard for their rights and he actively participated in this

we are appealing, because of the fact it is not ---- it is my attorney's and my contention that that is not possession. This is not even my hotel. This is in front of the hotel, - it is not even where I do not even live. There was no evidence seized from the establishment that I was living in.

THE COURT: Right. Any way, in my judgment, you constituted part, and were a leader, - you and Rathburn, were a leader of these five or more, I guess and the one or two more they didn't catch up with.

MR. PIGMAN: I think the Court is assuming this, Your Honor.

THE COURT: Well, I'm not, --- that is my judgment from watching you here and watching you during the trial, --- that is my judgment, you and Rathburn were the ring leaders.

MR. PIGMAN: Ring leaders?

THE COURT: Right.

MR. PIGMAN: Ring leaders of what,
Your Honor?

THE COURT: Of this whole scheme of stealing, - stealing these Travelers checks, forging them, cashing them, using the proceeds. I don't know what you were going to do when you ran out of the checks, but----

1 consummated. There is no other evidence or testimony, linking
2 him with any weapon.

3 I think Judge Holden in the proceedings
4 in the civil action here, commented that Mr. Pigman allegedly
5 had his hand on a gun when he was arrested. A reading of the
6 transcript shows that that is erroneous. Mr. Pigman was
7 arrested with a - when he was reclining on a picnic table
8 using , - sort of leaning over a suitcase that evidently, or
9 we're told that it had a gun in it. The suitcase was not his,
10 it was in front of a motel at which he was not registered, -
11 he was staying at another motel, - the suitcase was locked.
12 Again it was not his suitcase.

13 I think a fair reading or a fair under-
14 standing of the presence and importance of any weapons in this
15 case can be discounted in Mr. Pigman's case. There was evi-
16 dence that some of the participants used the guns only for
17 target shooting at one point. Mr. Pigman, from the record,
18 did not even participate in that.

19 So, it is important because of the
20 posture of this case has taken so far, that it be understood
21 that Mr. Pigman did not have anything to do with any of the
22 weapons involved in this case.

23 The other matter which the record will
24 bear out has played an important part in the sentencing has
25 been the extent of, or purported extent, of Mr. Pigman's par-
26 ticipation in this criminal activity.

One gets the suggestion from reading

1 the previous sentencing transcript that it was thought that
2 Mr. Pigman was the ringleader. There is no evidence whatso-
3 ever, in the transcript, that that could be the case and I can
4 site the Court numerous instances in which a co-defendant could
5 be shown by implication to be a single ringleader.

6 The record is so very clear on this
7 point. Those two items, the extent of Mr. Pigman's partici-
8 pation and the inuendoes arising from the presence of the guns i
9 in this case I think it played an important part before/sen-
10 tencing and at this time they should be understood because
11 at this sentencing, we are trying to re-do that which was done
12 erroneously after the initial trial and I think that Mr. Pigman
13 should be given the benefit of every doubt here. We should
14 try to return to the immediate post-trial time as much as we
15 can.

16 Beyond the specifics of the criminal
17 activity here on the participation is the attempts or the,
18 well yes, the attempt that Mr. Pigman would like to be able to
19 make a return to society after having served nearly seven (7)
20 years I believe as, - of this sentence, that is two more years
21 than the other co-conspirators who pled guilty, without going
22 to trial received.

23 Of course, it is difficult under the
24 circumstances, Mr. Pigman being from Cedar Rapids and intending
25 now to return to Oregon to get character witnesses here and
26 after having spent seven (7) years under custody, but it is
27 very clear I think, that he has established a very good record

but irregardless of that, I still am ready for society. I'm ready to meet the challenges and be man enough to face up to reality.

THE COURT: Has Mr. Rathburn been released?

MR. PIGMAN: I understand, I haven't been in contact with any of the other coconspirators as my present incarceration since I have had no contact with them whatsoever.

THE COURT: Thank you. We had a lengthy discussion, discourse with Mr. Cook at the last hearing.

MR. O'NEILL: I have no intention of going into those matters. I think they're fully before the Court. I would like to add with respect to the matters of Mr. Rathburn to the best of our knowledge he's still in jail. We don't know one way or the other.

THE COURT: It has no bearing. I'm just curious.

Mr. Pigman, will you stand up? The Court believes that it now has before it all information relevant and necessary to resentencing of the defendant. This includes a review of the defendant's proposed order for resentencing, and Government's memorandum, and associated documents supplied to Judge Holden under date of June 4, of

this year. In resentencing, Mr. Pigman, I have eliminated from consideration the following prior convictions set forth in the presentence report of January 10, 1969, in which Mr. Pigman was not represented by counsel. That is, Mr. Pigman was not represented by counsel as far as the convictions were concerned. And, Mr. Harlow, I would ask you to follow along as far as these are concerned. I've eliminated the September 26, 1957 conviction for reckless driving; November 12, 1957, for drunkenness, etc.; April 16, 1958, excessive noise; April 25, 1959, all that's described as April 29, '59, in your proposed presentence order for drunkenness. May 16, 1962, conviction for DTS. I'm not certain what DTS is. August 19, 1964, assault & battery. September 8, 1965, assault & battery. July 18, 1966, drunkenness. June 7, 1967, falsely drawing and uttering checks. Now, are there any other convictions? These are adult convictions that you think should be considered eliminated from my consideration.

MR. HARLOW: Other than as set forth in our memorandum, I don't have that.

THE COURT: I think I have tried to read your memorandum against the presentence report, 1968, and try to eliminate anything in which Mr. Pigman was not represented by counsel. I'm now talking about the adult

convictions.

MR. HARLOW: There are some convictions involving the military in some way.

THE COURT: I'm just talking - I'm coming to those, but as far as the convictions as an adult, I understand those are all the ones in which Mr. Pigman was not represented by counsel.

I'm eliminating from consideration the following four juvenile convictions in which Mr. Pigman states he was unrepresented by counsel. August 18, 1951, for larceny. February 8, 1952, threat to his stepmother. April 30, 1952, disturbing the peace. September 29, 1952, larceny, fighting, and similar matters, and I understand these are the only four juvenile convictions that Mr. Pigman has. Is that correct?

MR. HARLOW: Yes, your Honor.

THE COURT: As part of the defendant's family background, I'm taking note of those convictions merely as a showing general pattern of instability in defiance of authority during the defendant's juvenile years, but just solely as the general pattern may disclose and not taking into fact that he was convicted without benefit of counsel. I'm also not considering any convictions as a result of any courts martial for offenses for which the defendant stood

trial while a member of the Armed Forces. But I'm considering the fact that his service commitment terminated by other than an honorable discharge. I don't know the exact nature of the discharge. It appears to be indicated in the files that Judge Gibson knew, but I couldn't find it, but it was other than honorable terms.

MR. PIGMAN: Undesireable conduct.

THE COURT: Well, I'm considering that. I'm considering the two convictions of the defendant for breaking and entering in March 14, 1972, and June 14, 1972, in Lynn County, Iowa in which he was represented by counsel, and which occurred following his release on parole in connection with his various Federal charges. I also take note that his conviction on the two Nebraska charges resulted in revocation of his parole, and his return to Federal custody. My decision to consider the defendants convictions subsequent to the time that he was originally sentenced is based upon the precedent found in those cases in parallel situations set forth in the Government's memorandum in opposition to defendant's motions for deletion of convictions subsequent to original sentence. In particular I find North Carolina vs. Pierce, 395, U. S. 711, to be highly relevant. It would be unrealistic in resentencing of this nature not to consider as stated in the Pierce case events

which throw new light upon the defendants health habits, conduct and mental and moral propensities particularly when considered as also stated in Pierce in light of prevalent modern philosophy of penology that the punishment should fit the defender and not merely the crime. For sentencing purposes, I'm accepting defendant's contention that the record does not disclose any direct possession or involvement by him with the numerous firearms which were seized in connection with the apprehension of the defendant, and his coconspirators, but I do give some limited weight to the great number of guns, and ammunition, including hand guns and sawed off shot guns, which were on hand when the defendant was apprehended. These guns, if not actually in defendants possession clearly must have been in the possession of the coconspirators and the defendant must have been aware of that fact. I'm also considering that Judge Gibson, who sat through the lengthy trial in this matter thought the evidence of the defendant's guilt to be overwhelming. Based upon his observation of him at the time of sentencing and during the trial, was of the opinion that he was one of the leaders of the group with which he was associated. The weight and credibility to be afforded the evidence, and the witnesses is particular for the evaluation of the trial judge in matters of this sort for obvious reasons. I feel con-

strained to note the defendant's expressed desire to return to society and this expressed willingness to become a good and law abiding citizen, if permitted to do so fails significantly in light of his experience of just over two years ago when he was permitted this opportunity and failed to take advantage of it. Also, I feel constrained to note the defendant's past record based solely upon those convictions in which he was represented by counsel, and disregarding entirely those in which he was not so represented, and disregarding those in which he as a juvenile or which occurred while he was in the service is considerably less than impressive, and little assistance to his cause when it comes to consideration as to the sentence which should be imposed upon him.

Based on one presentence report after disregarding those items which I stated earlier, I stated I would eliminate from consideration, Two, the nature of offense involved. Three, Judge Gibson's remarks at the time of imposition of the original sentence, disregarding those remarks which had to do with defendants earlier convictions, which Judge Gibson stated he was considering. Four, Defendants Nebraska convictions in 1972 resulting in violation of his parole term. Five, the traditional sentencing considerations of punishment, deterrents, both general and specific, and

rehabilitation, I reached the conclusion that the sentence as to Count 1 of the indictment should be, instead of ten years, should be nine years, and that the resentence in this matter, that is, the defendant is committed to the custody of the Attorney General or authorized representative for imprisonment for a term of nine years. I impose no sentence as to Count 2, as I consider that sentence which has previously been modified to three years to be served concurrently with the sentence as to Count 1, has now been served.

Anything further Mr. O'Neill or Mr. Harlow?

MR. O'NEILL: Nothing further, your Honor.

- - -

C E R T I F I C A T E

I, George Lee LaVictoire, hereby certify that the foregoing is a complete and accurate transcript of the sentencing of Jack Rex Pigman.

George Lee LaVictoire

